

**ENGINEERING, PROCUREMENT AND CONSTRUCTION
AGREEMENT**

BETWEEN

**SOUTH CAROLINA ELECTRIC & GAS COMPANY, FOR ITSELF AND
AS AGENT FOR THE SOUTH CAROLINA PUBLIC SERVICE
AUTHORITY, AS OWNER**

AND

**A CONSORTIUM CONSISTING OF WESTINGHOUSE ELECTRIC
COMPANY LLC AND STONE & WEBSTER, INC., AS CONTRACTOR**

FOR

AP1000 NUCLEAR POWER PLANTS

DATED AS OF MAY 23, 2008

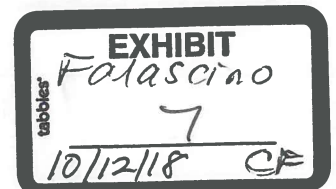


TABLE OF CONTENTS

	Page
ARTICLE 1– DEFINITIONS	2
ARTICLE 2– INTERPRETATION	16
ARTICLE 3– SCOPE OF WORK	17
3.1 General	17
3.2 Phases of the Work	17
3.3 Project Schedule	18
3.4 Not Used	18
3.5 Contractor Responsibilities	19
3.6 Owner's Responsibilities	21
3.7 Subcontractors	23
ARTICLE 4– FACILITY LICENSES, PERMITS AND APPROVALS	27
4.1 Owner Permits	27
4.2 Contractor Permits	28
4.3 ITAACs	28
ARTICLE 5– QUALITY ASSURANCE	28
5.1 Quality Assurance	28
5.2 Reporting of Defects, Noncompliance, Failures and Breakdowns of QA Programs	29
5.3 Quality Control and Inspection Activities	30
5.4 Access and Auditing at Contractor Facilities	30
5.5 Access and Audits at Subcontractors' Facilities	30
5.6 Witness and Hold Points	31
5.7 Owner's Right to Inspect and Stop Work	32
ARTICLE 6– CONTRACT PRICE	32
6.1 Components of the Contract Price	32
6.2 Most Favored Customer	32
6.3 Future Fuel Agreement and Services Agreement	33
ARTICLE 7– PRICE ADJUSTMENT PROVISIONS	34
ARTICLE 8– PAYMENTS	34
8.1 Target Price and Time and Materials Payments	34

TABLE OF CONTENTS
(continued)

	Page
8.2 Milestone Payments	35
8.3 Final Payment	35
8.4 Supporting Documentation; Payment Disputes	36
8.5 No Acceptance by Payment	37
8.6 Security for Payment and Performance	37
8.7 Separate Payments for Consortium Members	38
ARTICLE 9— CHANGES IN THE WORK	38
9.1 Entitlement to Change Order	38
9.2 Owner-Directed Changes	39
9.3 Effect of Changes	39
9.4 Change Orders	40
9.5 Disputes over Changes	41
9.6 Changes for Contractor's Convenience	41
9.7 Optional Services and Equipment	42
9.8 Changes in Import Fees and Duties	42
ARTICLE 10— UNCONTROLLABLE CIRCUMSTANCES	42
10.1 Performance Excused	42
10.2 Notice	42
ARTICLE 11— TESTING	43
11.1 Scope and Objective of Testing	43
11.2 Construction and Installation Tests	43
11.3 Preoperational System Tests	44
11.4 Startup Tests Objectives and Protocol	45
11.5 Performance Tests	47
11.6 Net Unit Electrical Output Guarantee	49
ARTICLE 12— STAGES OF COMPLETION	51
12.1 Turnover	51
12.2 Preoperational Test Completion	52
12.3 Startup Test Completion	52
12.4 Substantial Completion	53

TABLE OF CONTENTS
(continued)

	Page
12.5 Punch List	53
12.6 Final Completion.....	53
ARTICLE 13– LIQUIDATED DAMAGES	54
13.1 Delay Liquidated Damages.....	54
13.2 Performance Liquidated Damages	55
13.3 Performance Bonus	55
13.4 Payment	55
ARTICLE 14– WARRANTY	56
14.1 Equipment.....	56
14.2 Services Warranty	60
14.3 Warranty of Title.....	60
14.4 Limitations and Disclaimers	61
14.5 Extended Equipment Warranty	62
14.6 Limitation on Warranty Liability	62
ARTICLE 15– INDEMNITY	62
15.1 Contractor Indemnity.....	62
15.2 Owner's Indemnity	63
15.3 Intellectual Property Indemnity.....	63
15.4 Owner's Nuclear Incident Indemnity.....	64
15.5 Indemnity Procedures.....	65
ARTICLE 16– INSURANCE.....	66
16.1 Phase I Insurance Requirements	66
16.2 Phase II Insurance Requirements	67
16.3 Provisions Applicable to all Coverages.....	69
ARTICLE 17– LIMITATION OF LIABILITY	70
17.1 No Consequential Damages.....	70
17.2 Maximum Total Liability; Time Limitation	70
17.3 Division of Liability	71
ARTICLE 18– LIENS.....	71
18.1 Liens	71

TABLE OF CONTENTS
(continued)

	Page
18.2 Discharge or Bond.....	71
ARTICLE 19– PROPRIETARY DATA.....	72
19.1 Protection of Owner Proprietary Data.....	72
19.2 Protection of Contractor's Proprietary Data.....	73
19.3 Special Procedures Pertaining to Contractor's Proprietary Data.....	75
19.4 Ownership of Rights in Documentation.....	79
19.5 Ownership of Invention Rights.....	79
19.6 Software.....	80
19.7 Publicity.....	80
ARTICLE 20– ENVIRONMENTAL; HAZARDOUS MATERIALS.....	80
20.1 Material Safety Data Sheets.....	80
20.2 Facility Use, Storage Removal.....	80
20.3 Handling, Collection, Removal Transportation and Disposal.....	80
20.4 Notice of Discovery.....	81
ARTICLE 21– TITLE; RISK OF LOSS.....	81
21.1 Transfer of Title.....	81
21.2 Risk of Loss.....	81
21.3 Risk to a Party's Property.....	82
ARTICLE 22– SUSPENSION AND TERMINATION.....	82
22.1 Suspension by the Owner for Convenience.....	82
22.2 Termination by Owner for Cause.....	83
22.3 Termination by Owner for Convenience.....	84
22.4 Suspension and Termination Due to Other Circumstances.....	84
22.5 Termination by Contractor.....	86
22.6 Actions Required of Contractor upon Termination.....	87
ARTICLE 23– SAFETY; INCIDENT REPORTING.....	87
23.1 Environmental, Health and Safety Programs.....	87
23.2 Designated Contractor Safety Representative.....	87
23.3 OSHA and Other Laws.....	88
23.4 Worksite Safety.....	89

TABLE OF CONTENTS
(continued)

	Page
23.5 Dangerous Materials.....	89
23.6 Cooperation in Governmental Investigations and Inspections	89
23.7 Audit	89
ARTICLE 24— QUALIFICATIONS AND PROTECTION OF ASSIGNED PERSONNEL.....	90
24.1 Screening Measures.....	90
24.2 Contractor's Personnel	90
24.3 Training of Employees	91
24.4 NRC Whistleblower Provision.....	91
24.5 Respirator Protection	91
ARTICLE 25— RECORDS AND AUDIT	91
25.1 Technical Documentation	91
25.2 Accounting Records	92
25.3 Maintenance of Records Generally	92
25.4 Right to Audit.....	92
25.5 Sales Tax Records	92
ARTICLE 26— TAXES	93
26.1 Employment Taxes.....	93
26.2 Sales and Use Taxes on Contractor Tools	93
26.3 Sales and Use Tax on Equipment.....	93
26.4 State Property Taxes.....	93
26.5 Tax Indemnification	94
26.6 Pollution Control Equipment Information.....	94
26.7 Non-resident Contractor	94
ARTICLE 27— DISPUTE RESOLUTION	94
27.1 Claims	94
27.2 Change Dispute	95
27.3 Resolution by Negotiation	95
27.4 Mediation	96
27.5 Arbitration of Claims Falling Below the Threshold Amount	96

TABLE OF CONTENTS
(continued)

	Page
27.6 Exclusive Resolution Procedures; Equitable Remedies	98
27.7 Consent to Jurisdiction	98
27.8 Continuation of Work	99
ARTICLE 28– NOTICES	99
ARTICLE 29– ASSIGNMENT	101
ARTICLE 30– WAIVER	101
ARTICLE 31– MODIFICATION	101
ARTICLE 32– SURVIVAL	101
ARTICLE 33– TRANSFER	101
ARTICLE 34– GOVERNING LAW; WAIVER OF JURY TRIAL; CERTAIN FEDERAL LAWS	102
34.1 Governing Law	102
34.2 Waiver of Jury Trial	102
34.3 Certain Federal Laws	102
ARTICLE 35– RELATIONSHIP OF OWNER AND CONTRACTOR	102
ARTICLE 36– THIRD PARTY BENEFICIARIES	102
ARTICLE 37– REPRESENTATIONS AND WARRANTIES	103
37.1 Representations and Warranties of Contractor	103
37.2 Representations and Warranties of SCE&G and Santee Cooper	103
ARTICLE 38– MISCELLANEOUS PROVISIONS	104
38.1 Rights Exclusive	104
38.2 Severability	104
38.3 Entire Agreement	105
38.4 Counterparts	105

EXHIBITS

Exhibit	<u>Description of Exhibit</u>
A	Scope of Work/Supply and Division of Responsibilities
B	Contractor Organization Chart
C	Owner and Contractor Permits
D	Project Execution Plan Processes
E	Project Schedule
F-1	Milestone Payment Schedule
F-2	Payment Plan
G	Time and Materials Rates and Charges
H	Pricing
I-1	Toshiba Parent Guaranty
I-2	Shaw Parent Guaranty
J	Price Adjustment Provisions
K	Costs
L	Net Electric Guarantee Conditions and Load List
M-1	Software License
M-2	AP1000 Intellectual Property License (WEC)
M-3	AP1000 Intellectual Property License (S&W)
N	Industry Codes and Standards
O-1	Proprietary Data Agreement
O-2	List of Intellectual Property Subject to Third Party License Terms

Execution Version

Confidential Trade Secret Information—Subject to Restricted Procedures

Exhibit	<u>Description of Exhibit</u>
P-1	Major Subcontractors
P-2	Subcontractors for Site Construction and Related Field Services
Q	Equipment with Owner-Designated Witness and Hold Points
R	Description of Site
S	EEO and Small Business Regulations
T	[Not Used]
U	OCIP Description
V	Limited Agency Agreement
W	Extended Equipment Warranty Special Terms

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT (the "Agreement") is entered into as of the 23rd day of May, 2008 (the "Effective Date"), by and between SOUTH CAROLINA ELECTRIC & GAS COMPANY ("SCE&G"), for itself and as agent for the South Carolina Public Service Authority, a body corporate and politic created by the laws of South Carolina ("Santee Cooper") pursuant to the Limited Agency Agreement between SCE&G and Santee Cooper dated May 23, 2008 attached hereto as Exhibit V (the "Limited Agency Agreement"); and a consortium consisting of WESTINGHOUSE ELECTRIC COMPANY LLC, a Delaware limited liability company having a place of business in Monroeville, Pennsylvania ("Westinghouse"), and STONE & WEBSTER, INC., a Louisiana corporation having a place of business in Charlotte, North Carolina ("Stone & Webster"). Except where the context otherwise requires, Westinghouse and Stone & Webster hereinafter are individually referred to as a "Consortium Member" and collectively as "Contractor". Without limiting the authority of SCE&G to act as agent on behalf of Santee Cooper as provided in Section 3.6(a) hereof, references herein to "Owner" shall mean each of SCE&G and Santee Cooper. Owner and Contractor may be referred to individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Owner desires to develop, license, procure and have constructed a nuclear-fueled electricity generation facility;

WHEREAS, Westinghouse is engaged in the business of designing, developing and supplying commercial nuclear facilities and has developed a pressurized water Nuclear Power Plant known as the AP1000 (the "AP1000 Nuclear Power Plant") for which the U.S. Nuclear Regulatory Commission has issued a Standard Design Certification in the form of a rule set forth in Appendix D to 10 C.F.R. Part 52;

WHEREAS, Stone & Webster is engaged in the business of designing and constructing industrial and power generation facilities;

WHEREAS, Westinghouse and Stone & Webster desire to assist Owner in the licensing of and to design, engineer, procure, construct, and test one or two AP1000 Nuclear Power Plants and related facilities, structures and improvements at the V.C. Summer station;

WHEREAS, Owner and Contractor now desire to enter into this Agreement to provide for, among other things, the design, engineering, procurement and installation of equipment and materials, and construction and testing of the Facility;

NOW, THEREFORE, in consideration of the recitals, the mutual promises herein and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties, intending to be legally bound, stipulate and agree as follows:

ARTICLE 1 – DEFINITIONS

For purposes of this Agreement, the following words and expressions shall have the meanings hereby assigned to them, except where the context clearly indicates a different meaning is intended. These definitions may be supplemented by any definitions contained in any of the documents incorporated by reference herein, but in case of any conflict or inconsistencies, the definitions set forth below shall prevail:

"AAA" means the American Arbitration Association.

"Additional Amount" has the meaning set forth in Section 22.4(d).

"AEA" means the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et seq.

"Affiliate" means, with respect to any Party, any other Person that (a) owns or controls, directly or indirectly, the Party, (b) is owned or controlled by the Party, or (c) is under common ownership or control with the Party, where "own" means ownership of fifty percent (50%) or more of the equity interests or rights to distributions on account of equity of the Party and "control" means the power to direct the management or policies of the Party, whether through the ownership of voting securities, by contract, or otherwise.

"Agreement" has the meaning set forth in the first paragraph above and shall include all Exhibits, and amendments hereto (including Change Orders).

"Ancillary Facilities" means the facilities, structures and improvements at the Site that are within Contractor's Scope of Work as provided in Exhibit A but are not part of a Unit.

"AP1000 Facility Information" means the information within Contractor's Scope of Work, in the form of electronic databases, documents, and drawings that pertain to Facility design, engineering, licensing, analysis, installation, performance, testing, operation and maintenance and shall be maintained by Contractor. Collectively, this information, either directly or by reference, shall reflect the current approved AP1000 Nuclear Power Plant associated with Contractor's Scope of Work at any point in time. A portion of this information, as defined in Exhibit A, shall be provided to Owner via an Information Management System (IMS).

"AP1000 Nuclear Power Plant" has the meaning set forth in the Recitals.

"Arbitral Panel" has the meaning set forth in Section 27.5(b).

"Bankruptcy Code" means the United States Bankruptcy Code, Title 11 of the United States Code.

"Business Day" means every calendar day other than Saturday, Sunday or a legal holiday recognized by the State of South Carolina.

"CCIP" has the meaning set forth in Section 16.2(a).

"Chairman" has the meaning set forth in Section 27.5(b).

"Change" has the meaning set forth in Section 9.1.

"Change Dispute" has the meaning set forth in Section 27.2.

"Change Dispute Notice" has the meaning set forth in Section 27.2.

"Change in Law" means (a) any adoption or change, after the Effective Date, of or in the judicial or administrative interpretation of any Laws (excluding any Laws relating to net income Taxes), which is inconsistent or at variance with any Laws in effect on the Effective Date, (b) the imposition after the Effective Date of any requirement for a new Governmental Approval or (c) the imposition after the Effective Date of any condition or requirement (except for any conditions or requirements which result from the acts or omissions of Contractor or any Subcontractor) not required as of the Effective Date affecting the issuance, renewal or extension of any Government Approval; that, in each case, is germane to the obligations of the Parties set forth in this Agreement.

"Change Order" means the written agreement regarding a Change contemplated by Section 9.4.

"Claim" has the meaning set forth in Section 27.1.

"Combined License" or "COL" means the combined construction and operating license issued pursuant to 10 C.F.R. Part 52 for the Facility.

"Combined License Application" or "COLA" means the COL application for the Facility at the Site that has been submitted to the NRC, as such application may be updated or changed from time to time.

"Consortium Member" has the meaning set forth in the opening paragraph of this Agreement.

"Construction and Installation Tests" means the tests conducted as provided in Section 11.2.

"Construction Equipment" means equipment, machinery, materials and/or test equipment used in the excavation, civil work, mechanical/electrical installation and/or testing of the Facility, until such equipment is no longer needed for tasks associated with Contractor's Scope of Work, and which shall not become a permanent part of the Facility.

"Contract Price" means the sum of the Firm Price, Fixed Price, Target Price and the Time and Materials Charges as set forth in Exhibit H.

"Contractor" has the meaning set forth in the opening paragraph of this Agreement.

"Contractor Disclosable Information" has the meaning set forth in Section 19.3(a).

"Contractor Interests" means Contractor and its (or their) members, and its (or their) respective Affiliates, successors and assigns, including any tier of the foregoing, its (or their) Subcontractors (including suppliers) of any tier, and employees of all the foregoing, this being limited to any activity connected in any way with this Agreement.

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"Contractor Non-Disclosable Information" has the meaning set forth in Section 19.3(a).

"Contractor Permits" means the Governmental Approvals identified as Contractor Permits in Exhibit C.

"Contractor's Project Director" means the Person whom Contractor designates in writing to administer this Agreement on behalf of Contractor.

"Costs" has the meaning set forth in Exhibit K.

"Credit Rating" has the meaning set forth in Section 8.6(b).

"Day" as used in the Agreement means a calendar day and includes Saturdays, Sundays and legal holidays.

"Delay Liquidated Damages" has the meaning set forth in Section 13.1.

"Design Control Document" or "DCD" means the revision of the AP1000 Nuclear Power Plant Design Control Document, APP-GW-GL-700, that is in effect as of the Effective Date.

"Documentation" means the documents that Contractor has agreed to provide in its Scope of Work as set forth in Exhibit A.

"DOE" means the U.S. Department of Energy and its staff.

"Effective Date" means the date of this Agreement first above written.

"Employment Taxes" has the meaning set forth in Section 26.1.

"Equipment" means machinery, computer hardware and its associated software, apparatus, components, articles, materials, systems and structures, and items of any kind that shall become a permanent part of the Facility to be provided by Contractor to Owner under this Agreement, but excluding the Nuclear Fuel.

"Equipment Warranty" has the meaning set forth in Section 14.1(a)(i).

"Exhibit" means each one of the documents Exhibit A through W annexed to this Agreement.

"Existing Confidentiality Agreement" has the meaning set forth in Section 19.2(c)(i).

"Extended Equipment Warranty" has the meaning set forth in Section 14.5.

"Extended Equipment Warranty Period" has the meaning set forth in Section 14.5.

"Facility" means the Unit or Units and the Ancillary Facilities, and is more fully described in Exhibit A.

"Facility Documentation" means the Documentation of the applicable Consortium Member plus, if not included within the Documentation, material and information within the possession or control of such Consortium Member or its Subcontractors and that Consortium Member has the right to transfer, sublicense or pass-through, that is reasonably necessary for a Qualified Entity to engage in the Unit Completion Purposes required to achieve the equivalent of Substantial Completion in relation to the Facility, including, without limitation, any listing and/or description of the AP1000 Nuclear Power Plant's functional, operational and performance capabilities, all user, operator, system administrator, technical, support and other manuals, and listings of functional specifications, help files, flow charts, logic diagrams, accepted and as built plans, if any, blueprints, architectural and engineering drawings; in each case whether written, printed, electronic, or other format. Facility Documentation does not include software or its associated documentation that is the subject of Exhibit M-1, Software License.

"Facility Manuals" means those manuals provided by Contractor for use by the Operator in connection with the operation and maintenance of the Facility.

"Facility Purposes" has the meaning set forth in Section 19.2(b)(i).

"Field Change" means a non-material change made to support installation that does not require a change to P&IDs, one-line electrical diagrams or the equipment arrangement drawings. Field changes are not contrary to the COL or the DCD, and are determined through a technical evaluation not to adversely affect the form, fit or function of the system, structure or component.

"Final Completion" means that a Unit has achieved all the conditions set forth in Section 12.6.

"Final Completion Punch List" has the meaning set forth in Section 12.5.

"Final Payment Invoice" has the meaning set forth in Section 8.3.

"Firm Price" means the portion of the Contract Price that is identified as Firm Price in Exhibit H as adjusted pursuant to Articles 7 and 9 and Exhibit J.

"First Wave Customers" means Owner, Southern Company and its Affiliates, Duke Energy Corporation and its Affiliates, and Progress Energy, Inc. and its Affiliates.

"Fixed Price" means the portion of the Contract Price that is identified as Fixed Price in Exhibit H, as adjusted pursuant to Article 9, but which is not subject to adjustment pursuant to Article 7.

"Full Notice to Proceed" means the written notice that Owner gives to Contractor authorizing Contractor to proceed with the remainder of the Work, subject to the limitations set forth in Section 3.2(b).

"G&A" means Stone & Webster's general and administrative costs as set forth in Exhibit G.

"Good Industry Practices" means any of the practices, methods, standards and acts engaged in and generally acceptable to the nuclear power industry in the United States that, at a particular time, in the exercise of reasonable judgment in light of the facts known at the time a decision

was made could have been expected to accomplish the desired result consistent with good business practices, reliability, economy and safety.

"Government Approval" means any authorization, consent, approval, clearance, license, ruling, permit, tariff, certification, exemption, filing, variance, order, judgment, no-action or no-objection certificate, certificate, decree, decision, declaration or publication of, notices to, confirmation or exemption from, or registration by or with any Government Authority relating to the design, engineering, procurement, construction, testing, financing, completion, ownership or operation of the Facility.

"Government Authority" means any federal, state, county, city, local, municipal, foreign or other government or quasi-governmental authority or any department, agency, subdivision, court or other tribunal of any of the foregoing that has jurisdiction over Owner, Contractor, the Facility or the activities that are the subject of this Agreement.

"Guaranteed Substantial Completion Date" for a Unit means the date set forth for such event in the Project Schedule as such date may be extended due to a Change or otherwise pursuant to the terms hereof.

"Hazardous Materials" means any substance or material regulated or governed by any Governmental Authority, or any substance, emission or material now or hereafter deemed by any court or Government Authority having jurisdiction to be a "regulated substance", "hazardous substance", "toxic substance", "pesticide", "hazardous waste", or any similar classification, including by reason of deleterious properties, ignitability, corrosivity, reactivity, carcinogenicity, or reproductive toxicity, and shall include those substances defined as a "source", "special nuclear" or "by-product" material pursuant to Section 11 of the AEA (42 U.S.C. Section 2014 et seq.) and those substances defined as "residual radioactive material" in Section 101 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7901 et seq.).

"Hold Point" means a critical step in a manufacturing or testing process beyond which Contractor or a Subcontractor cannot proceed except pursuant to the provisions in Section 5.6.

"House Loads" means those loads which receive power from the low voltage side of the main step-up transformer and the unit auxiliary transformers.

"Industry Codes and Standards" means the codes and standards set forth in Exhibit N.

"Insolvent" means, with respect to a Person, that such Person (i) makes any general assignment or any general arrangement for the benefit of creditors, (ii) files a petition or otherwise commences, authorizes, defaults as to or acquiesces in the commencement of a case, petition, proceeding or cause of action under any bankruptcy, insolvency or similar law for the protection of debtors or creditors, or has such a case, petition, proceeding or cause of action involuntarily filed or commenced against it and such case, petition, proceeding or cause of action is not withdrawn or dismissed within sixty (60) Days after such filing, (iii) otherwise becomes adjudicated a debtor in bankruptcy or insolvent (however evidenced), (iv) is unable (or admits in writing its inability) generally to pay its debts as they become due, (v) is dissolved (other than pursuant to a consolidation, acquisition, amalgamation or merger), (vi) has a resolution passed

for its winding-up, official management or liquidation (other than pursuant to a consolidation, acquisition, amalgamation or merger), (vii) seeks, or becomes subject to the appointment of an administrator, provisional liquidator, conservator, assignee, receiver, trustee, custodian or other similar entity or official for all or substantially all of its assets, (viii) has a secured party take possession of all or substantially all of its assets or has a distress, levy, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within sixty (60) Days thereafter, (ix) causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, said event has an analogous effect to any of the events specified in clauses (i) to (viii) (inclusive); or (x) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Invitees" means, with respect to a Person, such personnel or other Persons as have been permitted entry onto the Site by such Person.

"ITAAC" means the NRC inspections, tests and analyses and their associated acceptance criteria which are approved and issued for the Facility pursuant to 10 C.F.R. § 52.97(b)(1).

"Joint Test Working Group" has the meaning set forth in Section 11.1(b).

"Labor Shortage" means that the number of appropriately skilled, qualified, trained and experienced personnel sufficient to maintain the Project Schedule is not available at cost acceptable to Owner where the Work is to be completed.

"Law" means (a) any constitution, statute, law, rule, regulation, code, treaty, ordinance, judgment, decree, writ, order, concession, grant, franchise, license, agreement, directive, requirement, or other governmental restriction or any similar form of decision of or determination by, or any binding interpretation or administration of any of the foregoing by, any Government Authority, whether now or hereafter in effect or (b) any requirements or conditions on or with respect to the issuance, maintenance or renewal of any Government Approval or applications therefore, whether now or hereafter in effect.

"Licensing Basis" means the NRC requirements applicable to the Facility as set forth in, until such time as the COL is issued, the DCD and, upon its issuance, the COL.

"Lien" means any lien, mortgage, pledge, encumbrance, charge, security interest, option, right of first refusal, other defect in title or other restriction of any kind or nature.

"Limited Agency Agreement" has the meaning set forth in the opening paragraph of this Agreement.

"Limited Notice to Proceed" means the written notice that Owner gives to Contractor authorizing Contractor to proceed with the Work in a limited manner in accordance with Section 3.2(a).

"Long Lead Material Payment" means the initial payment equal to seventy million dollars ((\$70,000,000) received by Contractor from Owner for the reactor vessel, reactor vessel

internals, steam generators, reactor coolant pumps, pressurizer, accumulator tanks, core make-up tanks, passive RHR heat exchanger, reactor coolant loop hot leg, squib valves, control rod drive mechanisms, integrated head package, containment vessel and CA 20 modules.

"Maintenance Procedures" means the procedures, written or electronic, required to perform predictive, corrective, and preventive maintenance of the Facility systems, components and structures, and those procedures required for calibration and testing of instrumentation and measurement systems and other components that are required for operation and maintenance of the Facility.

"Major Equipment" means the following equipment: steam generators, reactor vessel and reactor vessel head, control rod drive mechanisms, main turbine, main turbine generator, turbine deaerator, reactor coolant pumps, containment vessel, cooling towers, main turbine condenser, reactor internals, main step-up transformers, pressurizer, diesel generators, feedwater pumps, circulating water pumps, polar crane, core makeup tanks, moisture separator reheaters, and any other equipment for which the contract(s) with the Subcontractor is for an amount in excess of \$10,000,000 or that Owner and Contractor agree shall be designated as Major Equipment.

"Major Equipment Purchase Order" has the meaning set forth in Section 3.7(c)(i).

"Major Equipment Vendor" has the meaning set forth in Section 3.7(c)(i).

"Major Subcontract" means a contract with a Major Subcontractor.

"Major Subcontractor" means the Subcontractors (or category of Subcontractors) identified on Exhibit P-1. For the avoidance of doubt, Major Subcontractors may include, but are not limited to, suppliers of Major Equipment.

"Mandatory Spare Parts" means those items to be identified in Exhibit A as Mandatory Spare Parts and required to support initial plant startup and to perform routine maintenance of the Equipment during the first two (2) years of plant operation.

"Maximum Liability Amount" has the meaning set forth in Section 17.2.

"Member" has the meaning set forth in Section 27.5(b).

"Milestone" means an event or series of events in the execution of the Work as set forth in Exhibit F-1.

"Milestone Payment" means the payment due with respect to a completed Milestone.

"Milestone Payment Schedule" means the Milestone Payment Schedule set forth in Exhibit F-1.

"Net Unit Electrical Output" means the electrical power of the Unit measured at the high side of the step-up transformer, with the conditions as stated in Exhibit L.

"Net Unit Electrical Output Guarantee" has the meaning set forth in Section 11.6.

"Net Unit Electrical Output Test" has the meaning set forth in Section 11.5(b).

"NRC" means the U.S. Nuclear Regulatory Commission and its staff.

"Non-Standard Plant" means the portions of the Facility that are not part of the Standard Plant.

"Nuclear Fuel" means fabricated nuclear fuel and services meeting the principal design requirements referenced in the DCD.

"Nuclear Incident" means any occurrence that causes bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source material, special nuclear material, or by-product material which is used in connection with the operation of the Facility. "Source material", "special nuclear material", and "by-product material", as applicable to this Agreement shall have those meanings assigned by the AEA.

"NuStart" means NuStart Energy Development, LLC.

"OCIP" has the meaning set forth in Section 16.2(a).

"Operating Procedures" means the procedures, written or electronic, required to operate the AP1000 Nuclear Power Plant under normal, abnormal, emergency, shutdown, or startup conditions.

"Operational Cycle" means, as to the first such cycle, the time period from the first fueling of a Unit until the Unit has achieved the conditions required to be met for performance of the Net Unit Electrical Output Guarantee after the first Nuclear Fuel reload, and for subsequent cycles, the time period from the end of an Operational Cycle until the beginning of the next one. For the avoidance of doubt, the foregoing does not mean that the Net Unit Electrical Output Test shall be re-performed at the end of an Operational Cycle.

"Operator" means Operator of a Unit and/or the Facility, it being understood that Contractor shall not be deemed to be the Operator of a Unit and/or the Facility under any circumstances.

"Optional Spare Parts" means those items that may be required to perform major maintenance of the Equipment, such as periodic overhaul, or that could fail based on industry experience and for which replacement parts may require longer lead times to obtain from the original equipment manufacturers.

"OSHA" has the meaning set forth in Section 23.3.

"OSHA Standards" has the meaning set forth in Section 23.3(b).

"Other Customer" has the meaning set forth in Section 6.2.

"Owner" has the meaning set forth in the opening paragraph of this Agreement.

"Owner Letter of Credit" has the meaning set forth in Section 8.6(d).

"Owner Permits" means the Government Approvals identified as Owner Permits in Exhibit C.

"Owner's Engineer" means the Person(s) designated by Owner to perform services for Owner in connection with the Facility and solely for Facility Purposes, who is (are) subject to the prior written approval of Contractor (such approval not to be unreasonably withheld, conditioned or delayed) and who has entered into a non-disclosure agreement with Owner relative to Facility Documentation, substantially on the terms of Exhibit O-1. Notwithstanding the above, no written approval is required from Contractor for Owner to designate an Owner's Engineer in the event of a termination of the Agreement under Section 22.2(a).

"Owner's Project Director" means the Person who Owner designates in writing to act on behalf of Owner under this Agreement.

"P&IDs" means piping and instrumentation diagrams.

"Party" and "Parties" has the meaning set forth in the opening paragraph of this Agreement.

"Payment Plan" has the meaning set forth in Section 8.1(a).

"Performance Bonus" has the meaning set forth in Section 13.3.

"Performance Liquidated Damages" means the liquidated damages paid pursuant to Section 13.2 for failure to meet the Net Unit Electrical Output Guarantee.

"Performance Liquidated Damages Cap" has the meaning set forth in Section 13.2.

"Performance Test" means the tests conducted as provided in Section 11.5.

"Person" means any individual, corporation, company, partnership, joint venture, association, trust, unincorporated organization or Government Authority.

"Personnel" means, with respect to a Person, such Person's employees, officers, directors, agents, personnel, representatives, subcontractors of any tier (including, for Contractor, its Subcontractors), vendors and any other third party independent contractors with whom such Person has contracted.

"Phase I" means the portion of the Work described in Section 3.2(a).

"Phase II" means the portion of the Work described in Section 3.2(b).

"PQAP" has the meaning set forth in Section 5.1(a).

"PQAPIP" has the meaning set forth in Section 5.1(a).

"Preoperational Test Completion" has the meaning set forth in Section 12.2(b).

"Preoperational Test Group" has the meaning set forth in Section 11.3(b).

"Preoperational Tests" means the tests conducted as provided in Section 11.3.

"Price Adjustment Provisions" means the terms set forth in Article 7 and Exhibit J.

"Prime Rate" means, as of a particular date, the prime rate of interest as published on that date in The Wall Street Journal, and generally defined therein as "the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks." If The Wall Street Journal is not published on a date for which the interest rate must be determined, the prime interest rate shall be the prime rate published in The Wall Street Journal on the nearest-preceding date on which The Wall Street Journal was published. If The Wall Street Journal discontinues publishing a prime rate, the prime interest rate shall be the prime rate announced publicly from time to time by Bank of America, N.A. or its successor.

"Pro Rata Profit" means the portion of the Profit that is associated with a specific portion of the Work.

"Profit" means the aggregate of the Profit for each Consortium Member for each element of the Contract Price as determined pursuant to Section H.2.7 of Exhibit H as of the Effective Date.

"Project Execution Plan" means the plan to be developed by Contractor and approved by Owner as provided in Section 3.5(h) setting forth the processes and procedures that shall enable the Work to be managed in an effective and efficient manner and in accordance with the requirements of this Agreement.

"Project Schedule" means the schedule of key dates for completion of the Work as set forth in Exhibit E.

"Proprietary Data" means the terms of this Agreement and any and all information, data, software, matter or thing of a secret, confidential or private nature relating to the business of the disclosing Party or its Affiliates, including matters of a technical nature (such as know-how, processes, data and techniques), matters of a business nature (such as information about costs, profits, markets, sales, customers, suppliers, the Parties' contractual dealings with each other and the projects that are the subject-matter thereof), matters of a proprietary nature (such as information about patents, patent applications, copyrights, trade secrets and trademarks), other information of a similar nature, and any other information which has been derived from the foregoing information by the receiving Party; provided, however, that Proprietary Data shall not include information which: (a) is legally in possession of the receiving Party prior to receipt thereof from the other Party; (b) the receiving Party can show by suitable evidence to have been independently developed by the receiving Party or its employees, consultants, affiliates or agents; (c) enters the public domain through no fault of the receiving Party or others within its control; (d) is disclosed to the receiving Party, without restriction or breach of an obligation of confidentiality to the disclosing Party or (e) is legally required to be disclosed; provided that the receiving Party subject to such a requirement uses its reasonable best efforts to notify the other Party of any request or subpoena for the production of any Proprietary Data and provides such Party with an opportunity to resist such a request or subpoena.

"Qualified Entity" has the meaning set forth in Exhibit M-2.

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"Quality Assurance Program" has the meaning set forth in Section 5.1(a).

"Ready for Performance Test Date" has the meaning set forth in Section 11.5(c).

"Ready for Startup Test Date" has the meaning set forth in Section 11.4(c).

"Recipient" has the meaning set forth in Section 19.2(c)(i).

"Recoverable Costs" has the meaning described in Exhibit K.

"Sales Tax" means any sales, use or similar tax imposed on Contractor, any Subcontractor or Owner with respect to the Work by any Government Authority.

"Santee Cooper" has the meaning set forth in the opening paragraph of this Agreement.

"SCE&G" has the meaning set forth in the opening paragraph of this Agreement.

"Scope of Work" means the scope of work and supply and division of responsibilities between Owner and Contractor set forth in Exhibit A.

"Screening Measures" has the meaning set forth in Section 24.1.

"Services" means all labor, transportation, packaging, storage, designing, drawing, creating, engineering, demolition, Site preparation, manufacturing, construction, commissioning, installation, testing, equipping, verification, training, procurement, Documentation, licenses to intellectual property or otherwise and other work, services and actions (including pursuant to any warranty obligations) to be performed by Contractor hereunder (whether at the Site or otherwise) in connection with, or relating to, the Facility (or any component thereof, including any Equipment).

"Services Warranty" has the meaning set forth in Section 14.2.

"Services Warranty Period" has the meaning set forth in Section 14.2.

"SGA" means Westinghouse's sales, general and administrative costs developed as provided in Section H.2.5 of Exhibit H.

"Shaw" means The Shaw Group, Inc.

"Site" means the premises (or portion thereof) owned or leased by Owner on which the Facility shall be located, and including any construction laydown areas, as more specifically described in Exhibit R.

"Software" has the meaning set forth in Exhibit M.

"Specifications" means the design specifications and drawings, and changes thereto, prepared by Contractor or its Subcontractors for the design, engineering and construction of the Facility.

"SSDs" has the meaning set forth in Section 19.3(b)(viii).

"Standard Equipment Warranty Period" has the meaning set forth in Section 14.1(a)(ii).

"Standard Plant" means the plant design features and buildings or structures in the scope of the AP1000 Nuclear Power Plant certification as shown in the DCD Site Plan, Figure 1.2-2.

"Startup Test Completion" has the meaning set forth in Section 12.3(b).

"Startup Test Group" has the meaning set forth in Section 11.4(b).

"Startup Tests" means the tests conducted as provided in Section 11.4.

"Stone & Webster" has the meaning set forth in the opening paragraph of this Agreement.

"Stone & Webster Bond" has the meaning set forth in Section 8.6(b).

"Subcontract" means any contract, purchase order or other writing between Contractor and any Subcontractor under which the Subcontractor performs or provides any portion of the Work.

"Subcontractor" means (a) any Person other than Contractor performing or providing any portion of the Work, whether hired directly by Contractor or by a Person hired by Contractor and including every tier of subcontractors, sub-subcontractors and so forth, and (b) any Person providing or supplying all or a portion of the equipment or materials and supplies required by any Person performing or providing any portion of the Work to perform or provide the Work, whether or not incorporated into the Facility, including, any materialman, vendor or supplier, whether hired directly by Contractor or by a Person hired by Contractor and including every tier of subcontractors, sub-subcontractors and so forth.

"Substantial Completion" means that a Unit shall have achieved all the conditions set forth in Section 12.4.

"Substantial Completion Date" means the date on which Substantial Completion has occurred.

"Target Price" means the portion of the Contract Price identified as Target Price as set forth in Exhibit H, and as such amount is adjusted pursuant to the terms hereof.

"Target Price Basis" means that Contractor shall be compensated for the charges for Personnel, Services and Equipment, materials and other expenses pursuant to Section H.2.2. of Exhibit H.

"Target Price Work" means Work performed on a Target Price Basis.

"Taxes" means all present and future license, documentation, recording and registration fees, all taxes (including income, gross receipts, unincorporated business income, payroll, sales, use, personal property (tangible and intangible), real estate, excise and stamp taxes), levies, imports, duties, assessments, fees (customs or otherwise), charges and withholdings of any nature whatsoever, and all penalties, fines, additions to tax, and interest imposed by any Government Authority.

"Technical Support" includes providing qualified manpower and furnishing of technical guidance, advice and counsel with respect to Owner or its Personnel at the Site, and includes recommending a course of action with respect to Owner's operation of a Unit or the Facility based upon current design, engineering, construction and testing practices, but does not include or require any supervision, regulation, control, arbitration or measurement of Owner's Personnel.

"Termination Costs" means with respect to a termination under Section 22.3, 22.4, or 22.5, the aggregate of the following costs: (a) for Westinghouse, (i) the Recoverable Costs, not yet paid, that were incurred by Westinghouse prior to the date of notice of termination and (ii) the Recoverable Costs incurred by Westinghouse to bring the Work to an orderly conclusion, including the costs to demobilize and cancel Equipment or material orders placed, and including but not limited to cancellation charges paid by Westinghouse to third parties plus (iii) SGA and Pro Rata Profit on the amounts in (i) and (ii), and (b) for Stone & Webster, (i) any amounts, not yet paid, that are due for Work performed by Stone & Webster prior to the date of notice of termination and (ii) charges on a Time and Materials Basis incurred by Stone & Webster to bring the Work to an orderly conclusion, including the costs to demobilize and cancel Equipment or material orders placed, and including but not limited to cancellation charges paid by Stone & Webster to third parties. All such expenses, proceeds and payment shall be substantiated by documentation reasonably satisfactory to Owner and subject to audit as set forth in Article 25.

"Third Party Claim" means any claim, demand or cause of action of every kind and character by any Person other than Owner or Contractor.

"Threshold Amount" means (i) for a monetary Claim, that a Party has in good faith alleged that such Claim involves an amount in controversy of greater than Twenty-Five Million Dollars (\$25,000,000) and/or (ii) for a Claim involving an adjustment to the Project Schedule, that a Party has in good faith alleged that such Claim involves an adjustment to the Project Schedule in excess of seventy-five (75) Days. If a Claim alleges both an amount and adjustment to the Project Schedule in controversy, such Claim will fall below the Threshold Amount only if both (i) the amount in controversy is equal to or less than Twenty-Five Million Dollars (\$25,000,000) and (ii) the adjustment to the Project Schedule in controversy is equal to or less than seventy-five (75) Days.

"Time and Materials Basis" means that Contractor shall be compensated for the charges for Personnel and Equipment, materials and other expenses pursuant to Section H.2.3 of Exhibit H, using the rates and charges in Exhibit G.

"Time and Materials Charges" means the portion of the Contract Price identified as Time and Materials Charges, as set forth in Exhibit H.

"Time and Materials Work" means Work performed on a Time and Materials Basis.

"Toshiba" means Toshiba Corporation.

"Turnover" has the meaning set forth in Section 12.1(a).

"Uncontrollable Circumstance" means any event or condition beyond the reasonable control of a Party despite its reasonable efforts to prevent, avoid, delay or mitigate such acts, events or occurrences, which prevents, impacts or delays a Party from performing its obligations under this Agreement, including but not limited to the following:

(a) An act of God, including landslide, lightning, earthquake, fire, explosion, storm, flood, unusual or severe weather conditions, including hurricanes, tornadoes; and any precautionary actions taken in connection therewith;

(b) Acts of a public enemy, war, blockade, embargo, insurrection, riot or civil disturbance, sabotage or similar occurrence or any exercise of the power of eminent domain, police power, any act of terrorism, epidemic, condemnation or other taking by or on behalf of any public, quasi-public or private entity; any strike or other concerted labor actions; and any precautionary action or evacuation taken in connection with any of the foregoing;

(c) The suspension, termination, interruption, denial, delay in obtaining or failure of renewal or issuance of any Government Approval relating in any way to the Work or operation of the Facility that is not the result of willful or negligent action by the Party claiming the Uncontrollable Circumstance;

(d) An order or other action by a Government Authority that is not the result of willful or negligent action by the Party claiming the Uncontrollable Circumstance;

(e) Labor Shortage; provided; however, the circumstances described in the definition of Labor Shortage shall not be considered a "Labor Shortage" to the extent they are the result of Contractor's failure to take commercially reasonable steps to plan for the needed work force in advance of the project staffing (e.g., prepare estimates of the labor requirements and advertise, recruit and train in accordance with industry practices); or

(f) Delays due to accidents in shipping or transportation provided that such accidents are not the result of negligence or willful misconduct by the Party claiming Uncontrollable Circumstance.

Westinghouse's obligations under those certain "Preferential Rights Agreements", each of which requires that Westinghouse give preference to the completion date for an AP1000 Nuclear Power Plant facility of another customer upon the occurrence of certain procedures as set forth therein, shall not constitute an Uncontrollable Circumstance.

"Unit" means each AP1000 Nuclear Power Plant to be constructed hereunder at the Site. "First Unit" or "Unit 2" refers to the first such Unit to be constructed and "Second Unit" or "Unit 3" refers to the second such Unit to be constructed.

"Unit Completion Purposes" has the meaning set forth in Exhibit M-2.

"Unit Mechanical Completion" has the meaning set forth in Section 12.2(a).

"Warranties" means the obligations of Contractor under Article 14.

"Warranty" refers to either the Equipment Warranty or the Services Warranty, as the case may be.

"Warranty Period" means the Standard Equipment Warranty Period or Extended Equipment Warranty Period, as applicable.

"Westinghouse" has the meaning set forth in the opening paragraph of this Agreement.

"Westinghouse Bond" has the meaning set forth in Section 8.6(c).

"Whistleblower Provisions" has the meaning set forth in Section 24.4.

"Witness Point" means a critical step in a manufacturing or testing process that is subject to witnessing by Owner or its authorized representative in accordance with the procedures set forth in Section 5.6.

"Work" means the supervision, labor, Services, material, equipment, tools, vehicles, transportation, storage, design, engineering, procurement, site preparation, construction, installation, equipping, testing, and other things and actions to be supplied by or through Contractor necessary to furnish and install the Facility at the Site consistent with Contractor's Scope of Work and necessary to bring the Unit(s) to Final Completion subject to and in accordance with the terms of this Agreement.

ARTICLE 2 – INTERPRETATION

A. Titles, headings, and subheadings of the various articles and paragraphs of this Agreement are used for convenience only and shall not be deemed to be a part thereof or be taken into consideration in the interpretation or construction of this Agreement.

B. Words importing the singular only shall also include the plural and *vice versa* where the context requires. Words in the masculine gender shall be deemed to include the feminine gender and *vice versa*.

C. Unless the context otherwise requires, any reference to a document shall mean such document as amended, supplemented or otherwise modified and in effect from time to time.

D. Unless otherwise stated, any reference to a party shall include its successors and permitted assigns, and any reference to a Government Authority shall include any entity succeeding to its functions.

E. Wherever a provision is made in this Agreement for the giving of notice, consent or approval by any person, such notice, consent or approval shall be in writing, and the word "notify" shall be construed accordingly.

F. This Agreement and the documentation to be supplied hereunder shall be in the English language.

G. Unless the context requires otherwise, with regard to general oversight of the Work, review of the drawings and Specifications and other documents, access to the Site and Work and other similar rights of Owner, the term Owner shall mean the Owner's Project Director or his designee. Unless the context requires otherwise any reference contained herein to this Agreement or any other agreement or any schedule, Exhibit or attachment hereto or thereto shall mean this Agreement or such other agreement or such schedules, Exhibits and attachments, as they may be amended or supplemented, unless otherwise stated.

H. Words and abbreviations not otherwise defined in this Agreement which have well-known nuclear industry meanings in the United States are used in this Agreement in accordance with those recognized meanings.

I. Neither Contractor nor Owner shall assert or claim a presumption disfavoring the other by virtue of the fact that this Agreement was drafted primarily by legal counsel for the other, and this Agreement shall be construed as if drafted jointly by Owner and Contractor and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

J. In the event the due date for any payment falls on a day that is not a Business Day, payment shall be due on the next Business Day.

ARTICLE 3 – SCOPE OF WORK

3.1 General. Contractor shall perform the Work identified as Contractor's responsibility in the Scope of Work (Exhibit A). The Work shall be performed in two phases, as more fully described in Section 3.2. Owner, as licensee under the COL, shall be ultimately responsible for the execution of all obligations and responsibilities under such COL; provided, however, that the Parties agree and acknowledge that Owner's responsibility under the COL does not relieve Contractor of any its obligations and responsibilities in the performance of Contractor's Work under the Agreement as described more fully herein.

3.2 Phases of the Work.

(a) Phase I. Phase I of the Work shall consist of Contractor's engineering support and other services required by Owner to support Owner's licensing efforts for the Facility (including receipt of approvals from the Public Service Commission of the State of South Carolina), continuation of design work (other than design work performed under the NuStart program), project management, engineering and administrative support to procure long lead time Equipment, the procurement of long lead time Equipment, construction mobilization and Site preparation work, all as more specifically described in Exhibit A. Phase I shall commence upon the Effective Date and shall continue until the earlier of issuance of the Full Notice to Proceed or termination of this Agreement in accordance with Article 22; provided, however, that Phase I Site Work must be authorized by Owner pursuant to one or more Limited Notices to Proceed. By mutual agreement of the Parties as set forth in a Change Order issued pursuant to Article 9, additional Site Work identified as part of Phase II in the Scope of Work may be moved to Phase I and authorized by Owner to proceed by means of an additional Limited Notice to Proceed. In the event that any Phase I Work that was commenced under separate

purchase orders between Owner and one or both of the Consortium Members (the "Purchase Orders") remains to be completed as of the Effective Date, then as of June 1, 2008, the Purchase Orders shall be terminated and the remaining work thereunder will be subsumed by this Agreement.

(b) Phase II. Phase II of the Work shall consist of the remainder of the Work as described in Exhibit A, to commence upon issuance of a notice (the "Full Notice to Proceed") and to continue until Final Completion unless the Agreement is earlier terminated in accordance with Article 22. The Parties acknowledge that the Full Notice to Proceed will not be issued unless and until the COL is received.

3.3 Project Schedule.

(a) A Project Schedule is attached to this Agreement as Exhibit E. The Project Schedule includes milestones for key activities, such as the placement of orders for long lead-time Equipment. Contractor shall update the Project Schedule quarterly prior to the commencement of on-Site construction work and monthly thereafter to reflect the most current information concerning the scheduled Milestones and provide the updated Project Schedule to Owner for its review and comment. Contractor shall, to the extent such matters are within its reasonable control, allocate resources and place Equipment orders in such a manner that will enable Contractor to meet the agreed date for Substantial Completion of the Units as shown in the Project Schedule. Except as otherwise permitted hereunder, Contractor shall not take any action to give priority to the requested completion date of another customer for an AP1000 Nuclear Power Plant required under a contract between Contractor and such customer if, by taking such action to give priority to such other customer, Contractor shall not be able to meet the Guaranteed Substantial Completion Date of a Unit. Subject to the preceding sentences, Changes to the Guaranteed Substantial Completion date(s) shall be in accordance with Article 9 of this Agreement.

(b) If Owner desires to cancel the Second Unit, it shall provide written notice of such intent to Contractor on or before issuance of the Full Notice to Proceed. The Guaranteed Substantial Completion Dates of the First Unit and Second Unit are April 1, 2016, and January 1, 2019, respectively. The nuclear island concrete basemat shall be poured prior to December 31, 2013 on both Units. The Guaranteed Substantial Completion Dates are based on a Full Notice to Proceed being received no later than fifty-four (54) months prior to the Guaranteed Substantial Completion Date for the First Unit, at which time first safety-related concrete must be placed. Prior to placing the first safety-related concrete, preparatory work, including the mud mat and rebar placement must be performed. Should the NRC review schedule for the COLA not support this schedule, Contractor shall be entitled to a Change Order pursuant to Article 9. In preparing such Change Order, the Parties will work toward the goal of maintaining the Guaranteed Substantial Completion Dates as stated above.

3.4 Not Used.

3.5 Contractor Responsibilities.

(a) Industry Standards. Subject to Article 9, Contractor shall perform and complete its obligations under this Agreement in accordance with applicable Laws, this Agreement, Industry Codes and Standards, and Good Industry Practices. In the event of any conflict between any of the authorities in the foregoing sentence, applicable Laws shall control over the terms of this Agreement, Good Industry Practices and Industry Codes and Standards; the terms of this Agreement shall control over Good Industry Practices and Industry Codes and Standards; and Industry Codes and Standards shall control over Good Industry Practices.

(b) Contractor's Key Personnel. Exhibit B contains a chart of Contractor's intended organization for its performance under this Agreement, including those positions to be designated as "key" management for the performance of the Work. For such key management positions, Contractor shall provide Owner with the resumes of the persons filling such positions for Owner's approval, which shall not be unreasonably withheld. Once Owner has approved any such person, Contractor shall not remove such person for its key management position described in Exhibit B without Owner's consent, which shall not be unreasonably withheld. If at any time during the performance of the Work, any of Contractor's personnel becomes, for any reason, unacceptable to Owner, then, upon notice from Owner, Contractor shall replace such unacceptable individual with an individual reasonably acceptable to Owner. Contractor's Project Director shall act as Contractor's liaison with Owner and shall have the authority to administer and manage this Agreement on behalf of Contractor, subject to any limitations on such authority notified by Contractor to Owner in writing.

(c) AP1000 Facility Information. The AP1000 Facility Information shall be controlled and maintained by Contractor for such period of time as is required pursuant to Contractor's Quality Assurance Program or, for information not covered by such Quality Assurance Program in accordance with Contractor's document retention procedures. The AP1000 Facility Information shall contain Facility deliverable documents and information, either directly or by reference. A means to access and print out documentation and information in the AP1000 Facility Information shall be made available to Owner through an information management system. Documentation required to be provided to Owner as set forth in Exhibit A shall be provided in accordance with the Project Schedule.

(d) Control of Work. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, procedures, safety and quality assurance, and quality control programs in connection with the performance of Contractor's Work. Under the conditions stated in Section 3.1 of this Agreement, Owner, as licensee under the COL, shall be ultimately responsible for the execution of all obligations and responsibilities under such COL. As such and under this Agreement, Owner has delegated to Contractor the overall control and implementation of all aspects of the Work. Accordingly, Contractor will develop a Project Execution Plan as provided in Section 3.5(h) which will identify all necessary interfaces between Contractor and Owner to assure that each Party can adequately fulfill its respective responsibilities under this Agreement and the applicable regulatory requirements.

(e) Emergencies. In the event of any emergency endangering life or property, Contractor shall take all actions as may be reasonable and necessary to prevent, avoid or mitigate

injury, damage or loss and shall promptly report each such emergency, and Contractor's responses thereto, to Owner. In any event, Contractor shall use commercially reasonable efforts to report an emergency to Owner in sufficient time to allow Owner to make any required reports to any Government Authority in accordance with applicable Laws.

(f) Office Facilities. During construction, Contractor shall provide Owner with office facilities on the Site as specified in Exhibit A.

(g) Periodic Reports and Meetings.

(i) Status Report. On a monthly basis, Contractor shall submit to Owner a written status report covering the prior month. The report shall be prepared in a format reasonably acceptable to Owner, and, for Work performed on a Time and Materials Basis or Target Price Basis, shall be based on a time phased budget, at the cost account level, against which program performance can be measured. The report also shall include (w) a description of the progress of the Work, (x) a statement of any significant issues which remain unresolved and Contractor's recommendations for resolving the same, (y) a summary of any significant Facility events which are scheduled or expected to occur during the following interval, and (z) additional information reasonably requested by Owner. The monthly report may be delivered electronically.

(ii) Attendance and Participation. From the Effective Date until Final Completion, Contractor shall attend and participate in regular meetings with Owner which shall occur monthly (or upon such other interval as the Parties agree) for the purpose of discussing the status of the Work and anticipating and resolving any problems. Such meetings may be held by conference call or video conference. Contractor shall prepare and promptly deliver to Owner written minutes of each meeting, to which Owner shall respond in writing within a reasonable time if it has any comments.

(iii) Schedule Requirements; Updates. Contractor shall prepare and make available to Owner following the Effective Date, at the Site or such other location mutually agreed upon by the Parties, a current Project Schedule depicting critical path activities and illustrating the progress which has been made on the Work against such schedule, including critical path activities interconnected by schedule logistics, for Owner's review and comment. Unless otherwise mutually agreed upon by the Parties, Contractor shall revise and update the Project Schedule quarterly prior to the commencement of on-Site construction work and monthly thereafter and shall provide a copy to Owner, which may be provided electronically; provided, however, that the Guaranteed Substantial Completion Dates for the Units shall not be revised other than pursuant to Article 9. Portions of the schedule may be updated weekly to provide information necessary to support weekly invoices (if applicable). Such partial updates shall not be deemed to imply an update to the entire Project Schedule.

(h) Within sixty (60) Days following the Effective Date, Contractor shall provide a Project Execution Plan as described in Exhibit D to Owner for its review and approval.

(i) Contractor shall provide Owner with documentation to support Owner's compliance with Federal Energy Regulatory Commission and South Carolina Public Service

Commission cost reporting requirements. The detailed process to provide this documentation shall be included in the Project Execution Plan, using the guidelines provided in Exhibit H.

3.6 Owner's Responsibilities. Owner shall perform the responsibilities set forth in this Article and elsewhere in this Agreement, including Exhibit A, at its own expense and at those times as may be required by this Agreement for the successful completion of the Work in accordance with the Project Schedule.

(a) Appointment of Agent. Santee Cooper has appointed SCE&G as its agent pursuant to the Limited Agency Agreement, which is attached hereto as Exhibit V, for all purposes under this Agreement, with the power and authority to bind Santee Cooper to its obligations herein, subject to the limitations specifically set forth in the Limited Agency Agreement. Owner shall notify Contractor promptly in writing if there is any change in the limits of SCE&G's authority set forth in the Limited Agency Agreement. Contractor shall have the right to rely on any representation by SCE&G that it has the authority to act on behalf of Santee Cooper with respect to any and all matters pertaining to this Agreement, except with respect to those matters where Santee Cooper's prior written consent is required under the Limited Agency Agreement. With respect to those matters set forth in the Limited Agency Agreement, where Santee Cooper's prior written consent is required, SCE&G shall provide Contractor with evidence of Santee Cooper's written consent to any actions taken by SCE&G in connection with such matters.

(b) Owner's Representative. Owner shall appoint Owner's Project Director (and shall have the right to appoint any successor or replacement Project Director) with whom Contractor may consult at all reasonable times, and whose instructions, requests and decisions shall be binding upon Owner as to all matters pertaining to this Agreement.

(c) Access. From and after the time the Project Schedule indicates that Contractor is required to have access to the Site, Owner shall provide Contractor, at no additional cost to Contractor, rights of access to such portions of the Site as Contractor may reasonably require for the construction of the Facility and for Contractor's office, warehouse, shop buildings, welding facilities, Contractor's equipment storage, laydown area, and employee parking. Owner shall cooperate with Contractor so as to minimize disruption by Owner of Contractor's performance of the Work, and Contractor shall cooperate with Owner so as to minimize disruption of operation of the Units and the existing unit at the Site.

(d) Site Conditions and Site Parameters. Owner is responsible for all investigations required to determine the suitability of the Site for the Facility. This information has been furnished to Contractor. Contractor has conducted a reasonable visual inspection of the Site at Owner's expense and has notified Owner that there are no Site conditions that were evident or readily discernible that shall affect the cost or schedule for the construction of the Facility. Any subsurface or other site conditions subsequently discovered at the Site or changes in the Site parameters that do not conform to the information provided by Owner or were not evident or readily discernible upon Contractor's inspection shall entitle Contractor to a Change Order pursuant to Article 9.

(e) Utilities, Consumables and Services. Owner shall provide the electrical interconnect for power to be exported from the Facility at the interconnection points identified or to be identified in Exhibit A. The Scope of Work specifies the division of responsibilities between Owner and Contractor for utilities during construction and for the supply of certain consumables and services by Owner during construction and testing of the Facility. All such items to be supplied by Owner shall be supplied at the times required pursuant to the Project Schedule. Owner shall provide all Nuclear Fuel.

(f) Spare Parts.

(i) Mandatory Spare Parts. Within eighteen (18) months after finalization of the AP1000 Nuclear Power Plant design as specified in the then current Project Schedule, Contractor shall provide Owner with a list of spare parts for the Facility referred to as "Mandatory Spare Parts." The Parties shall determine a mutually agreeable price for such Mandatory Spare Parts, an estimate for which has been provided in Exhibit H. Mandatory Spare Parts will be provided on a Time and Materials Basis unless otherwise agreed by the Parties. As part of Contractor's Scope of Work, Contractor shall provide such Mandatory Spare Parts to Owner by the completion of the Startup Tests or as otherwise agreed to in the Project Schedule. All of the foregoing spare parts shall be considered to be parts supplied to Owner under this Agreement, and title thereto shall pass to Owner in accordance with Section 21.1. During the Warranty Period, Owner shall use commercially reasonable efforts to maintain an inventory of spare parts equivalent to the Mandatory Spare Parts and shall make such spare parts available to Contractor.

(ii) Optional Spare Parts. Within eighteen (18) months after finalization of the AP1000 Nuclear Power Plant design as specified in the then current Project Schedule, Contractor shall provide Owner with a list of Optional Spare Parts that are recommended by Contractor and vendors of Equipment comprising the Facility. At least two (2) years prior to the scheduled completion of the Startup Tests or as otherwise agreed to in the Project Schedule, Owner shall identify to Contractor the Optional Spare Parts which Owner wants Contractor to procure. Contractor shall be entitled to a Change Order pursuant to Article 9 to cover the additional costs of such Optional Spare Parts. Owner shall make such procured Optional Spare Parts available to Contractor for use during its performance of the Work (as supplements for the Mandatory Spare Parts procured by Contractor pursuant to Section 3.6(f)(i)).

(iii) Use and Replacement of Spare Parts. Contractor shall have the right to use spare parts that are in Owner's inventory specifically during the performance of the Work or to remedy a Warranty item; however, prior to Substantial Completion of the Second Unit (or if there is no Second Unit, the First Unit) or in response to the use of a spare during a Warranty repair, Contractor shall repair, replace and/or pay for (as consented to by Owner, such consent not to be unreasonably withheld) the replacement cost for such spare parts used by Contractor, plus expediting fees if expediting is deemed necessary by the Parties. Contractor shall coordinate with Owner concerning the delivery and storage of spare parts.

(g) Operation and Maintenance Staff. For those activities supported and/or conducted by Owner under Articles 11 "Testing" and 12 "Stages of Completion", Owner shall provide fully trained and qualified operation and maintenance personnel for testing and operation

and maintenance of a Unit or the Facility consistent with Contractor's requirements as determined during Phase I and as set forth upon such determination in Exhibit A. If as a result of circumstances encountered during testing, Contractor determines that additional operation and maintenance personnel are needed (and provided that such determination has been made in accordance with Good Industry Practices), Contractor shall have the right to require that additional operation and maintenance personnel be provided by Owner upon reasonable advance notice to, and following discussions with, Owner.

(h) Job Site Rules. From the Effective Date until Final Completion of the Second Unit (or if there is no Second Unit, the First Unit), each Party, its representatives and agents shall abide by the Site safety rules promulgated by the other Party.

3.7 Subcontractors.

(a) Selection of Subcontractors. Contractor shall have the right to have portions of the Work performed by Subcontractors. Subcontractors designated as Major Subcontractors are identified in Exhibit P-1. After the Effective Date, Contractor shall provide periodic updates to the Exhibit P-1 list and shall submit the updated list to Owner for review. Owner shall identify to Contractor any added Major Subcontractors that are unacceptable to Owner and provide to Contractor a reasonable basis for Owner's rejection of any such added Major Subcontractors. Exhibit P-2 contains a list of potential Subcontractors that may be used for Site construction and related field services. Contractor shall work proactively with Owner to choose acceptable Subcontractors for performance of the Work that is not part of the Standard Plant. In the event Contractor desires to use any Subcontractors that are not listed in Exhibit P-2 to conduct its Scope of Work on Owner's property with respect to both the Standard Plant and on work that is not part of the Standard Plant, Contractor shall notify Owner and, within five (5) Business Days of such notice, Owner shall notify Contractor if such proposed Subcontractor is not acceptable to Owner (such acceptance not to be unreasonably withheld). If Owner rejects any such selected Subcontractor and the use of a different Subcontractor would affect Contractor's costs for performance of the Work or the Project Schedule, Contractor shall be entitled to a Change Order pursuant to Article 9. If, however, Owner fails to provide such notice to Contractor within the five (5) Business Day period, then Owner shall be deemed to have approved such proposed Subcontractor. Subject to the prior provisions of this Section 3.7(a) with respect to Major Subcontractors, Contractor is not obligated to consult with Owner on its selection of Subcontractors not working on Owner's property. Owner shall have the right to recommend additions to Exhibit P-1 and P-2 from time to time, subject to Contractor's approval. Contractor shall be responsible for the actions and omissions of all Subcontractors.

(b) Affiliated Subcontractors. If Contractor enters into a Subcontract with an Affiliate of either Consortium Member, Contractor agrees that such Subcontract shall reflect terms no less favorable than would be available from a Person who is not an Affiliate. In the event that after the Effective Date, Contractor selects any Affiliate of either Consortium Member as a Subcontractor for Target Price Work or Time and Materials Work, Contractor shall notify Owner and Owner shall have the right to review such information as is reasonably necessary to assure Owner that the Subcontract reflect terms no less favorable than would be available from a

Person who is not an Affiliate. If any such Affiliate has been selected on a sole source basis, Contractor shall provide a justification for such selection.

(c) Performance by Contractor and Major Equipment Vendors; Owner's Cure Rights.

(i) Contractor warrants and represents that it shall in good faith fully and promptly perform and observe all of the agreements, terms, covenants and conditions required to be performed and observed by the Contractor under any material provision of a Subcontract for Major Equipment (a "Major Equipment Purchase Order"). Upon demand, Contractor shall furnish to Owner a certification that Contractor has paid all sums that each Major Equipment Purchase Order requires Contractor to pay, subject to Contractor's dispute rights under any such Major Equipment Purchase Order, and Owner may request verification from Contractor regarding the payment information related to such Major Equipment Purchase Order. Such rights of verification of payment are in addition to Owner's right to request additional documentation under Section 8.4(a) and audit rights under Section 25.4 herein. In the event that Contractor, despite acting in good faith, potentially does not satisfy this section as a result of a legitimate dispute with a Subcontractor of Major Equipment ("Major Equipment Vendor"), Contractor shall (a) notify Owner in writing of the issue and (b) if requested by Owner, tender any disputed amounts to Owner to be held in escrow, pending resolution of the issue.

(ii) Upon Contractor's receipt of the first payment from Owner for the purpose of procuring an item of Major Equipment, Contractor shall designate the schedule reservation for such item of Major Equipment to Owner and thereafter may not designate such schedule reservation to any third party without Owner's prior written consent.

(iii) Contractor shall promptly notify Owner in writing of: (a) any default, alleged default, notice claiming default, or event that, with the giving of notice or lapse of time, or both, would constitute a default by Contractor or the Major Equipment Vendor in the performance or observance of any of the material terms, covenants or conditions on the part of Contractor or the Major Equipment Vendor to be performed or observed under the Major Equipment Purchase Order; (b) the receipt by Contractor of any notice from the Major Equipment Vendor of any termination of the Major Equipment Purchase Order pursuant to the terms thereof or otherwise, (c) any action, proceeding, motion or notice commenced or filed in respect of a Major Equipment Purchase Order under the Bankruptcy Code or other insolvency proceeding, and (d) any claim, action or proceeding (including, but not limited to, any request for arbitration or institution of such arbitration) made by any party to a Major Equipment Purchase Order, and the progress thereof and any determination made by the court and/or arbitrators thereunder. Contractor shall promptly provide Owner with a copy of each such notice. In the event that Contractor fails to pay a Major Equipment Vendor all undisputed sums due and owing within thirty (30) Days after the applicable due date, Owner thereafter shall have the right to participate in any claim, action or proceedings relating to such payment default as an interested party until such time when Contractor has made such payment.

(iv) If Contractor is in default of a payment obligation pursuant to a Major Equipment Purchase Order, Owner may make the applicable payment due and owing

under such Major Equipment Purchase Order in order to cure such payment default; provided, however, that Owner shall not make such payment if, and so long as (a) Contractor shall take all steps necessary to challenge or take any action to cure such payment default; and (b) during such challenge or cure: (i) the interests of Owner may not be materially adversely affected, (ii) no time limits or grace periods under the Major Equipment Purchase Order would expire which would give Major Equipment Vendor any right or option to terminate the Major Equipment Purchase Order, and (iii) no additional right or remedy would become available to the Major Equipment Vendor by reason of the deferral by Owner of any action to effect a cure of the payment default. All such payments shall be offset and applied to all obligations under this Agreement.

(d) Owner's Consent for Termination or Modification of Major Equipment Purchase Orders.

(i) In the event that Contractor fails to pay a Major Equipment Vendor all undisputed sums due and owing within forty-five (45) Days after the applicable due date, without providing advance notice to Owner demonstrating to Owner's satisfaction that any Major Equipment provided under such Major Equipment Purchase Order shall be timely delivered at no additional charge and at terms that are no less favorable to Owner, Contractor shall not (A) terminate, cancel, release or assign such Major Equipment Purchase Order (nor permit any of the foregoing to occur), whether under Section 365 of the Bankruptcy Code (or any successor provision) or under any similar law or right of any nature, or otherwise; nor (B) modify, abridge, change, supplement, alter or amend any material provision of such Major Equipment Purchase Order, either orally or in writing, and no agreement seeking to modify, abridge, change, supplement, alter or amend a material provision of such Major Equipment Purchase Order shall be valid or binding without the prior written consent of Owner; nor (C) waive any of its material rights against the Major Equipment Vendor under such Major Equipment Purchase Order; nor (D) agree to or acquiesce in any rejection or termination of such Major Equipment Purchase Order by such Major Equipment Vendor or such Major Equipment Vendor's trustee in bankruptcy, whether under Section 365 of the Bankruptcy Code (or any successor provision) or under any similar law or provision, and any such abandonment, termination, cancellation, release, modification, change, supplement, alteration, amendment, waiver, agreement or acquiescence that negatively impacts Owner (i.e., increased cost or delayed delivery) shall be ineffective as against Owner. Such provisions shall apply until such time when Contractor has made the payments described above.

(ii) To the extent Owner has paid at least one-third of the total price of any Major Equipment Purchase Order, Contractor shall not, without the prior written consent of Owner, which consent shall not be unreasonably withheld: (a) terminate, cancel, release or assign such Major Equipment Purchase Order (nor permit any of the foregoing to occur), whether under Section 365 of the Bankruptcy Code (or any successor provision) or under any similar law or right of any nature, or otherwise; nor (b) modify, abridge, change, supplement, alter or amend any material schedule, performance, or payment requirements under such Major Equipment Purchase Order, either orally or in writing, and no agreement seeking to modify, abridge, change, supplement, alter or amend a material schedule, performance, or payment requirements under such Major Equipment Purchase Order shall be valid or binding without the prior written consent

of Owner; nor (c) waive any of its material rights against the Major Equipment Vendor under such Major Equipment Purchase Order; nor (d) agree to or acquiesce in any rejection or termination of such Major Equipment Purchase Order by such Major Equipment Vendor or Major Equipment Vendor's trustee in bankruptcy, whether under Section 365 of the Bankruptcy Code (or any successor provision) or under any similar law or provision, and any such abandonment, termination, cancellation, release, modification, change, supplement, alteration, amendment, waiver, agreement or acquiescence without Owner's prior written consent shall be ineffective as against Owner.

(e) Bankruptcy or Insolvency Proceedings Affecting Major Equipment Purchase Orders. If there shall be filed by or against Contractor a petition under the Bankruptcy Code, and Contractor shall determine to reject the Major Equipment Purchase Order pursuant to Section 365 of the Bankruptcy Code, Contractor shall give the Owner not less than ten (10) Days' prior written notice of the date on which Contractor shall apply to the bankruptcy court for authority to reject such Major Equipment Purchase Order. Owner shall have the right, but not the obligation, to serve upon Contractor within such ten (10) Day period a notice stating that (A) Owner demands that Contractor assume and assign such Major Equipment Purchase Order to the Owner pursuant to Section 365 of the Bankruptcy Code and (B) Owner covenants to cure (or provide adequate assurance of prompt cure of) all defaults and provide adequate assurance of future performance under such Major Equipment Purchase Order. If Owner serves upon Contractor the notice described in the preceding sentence, Contractor shall not seek to reject such Major Equipment Purchase Order and shall comply with the demand provided for in clause (A) of the preceding sentence within thirty (30) Days after the notice shall have been given, subject to the performance by Owner of the covenant provided for in clause (B) of the preceding sentence.

(f) Subcontract Terms. Contractor shall use commercially reasonable efforts to include in each Major Equipment Purchase Order provisions in substantially the following form for the protection of Owner. If Contractor is unable to obtain such agreement in advance from a Major Equipment Vendor, it shall promptly notify Owner; however, in the event that this Agreement is terminated, Contractor shall work cooperatively with Owner to obtain the agreement of the Major Equipment Vendor to assignment of its Subcontract or the relevant portion thereof at that time. It should be noted that the Subcontracts that Contractor will have with ABB Ltd. and Emerson Process Management for the supply of instrumentation and control related equipment associated with the Work will not be directly assignable to Owner in the event of termination of this Agreement.

(i) Major Equipment Vendor agrees that upon termination of the Agreement between Contractor and Owner for any reason other than Owner's default or Owner's termination for convenience, Owner, or its nominee, shall have the option to succeed automatically, without the necessity of further action by Contractor, to all rights and obligations of Contractor under this Major Equipment Purchase Order related to Owner scope of supply.

(ii) Subject to Section 3.7(c)(iv), Owner shall have the right, in its sole discretion, to make any late payment due and owing by Contractor hereunder in order to cure a

default by Contractor of a payment obligation hereunder, and Major Equipment Vendor shall accept such payment by the Owner with the same force and effect as if made by Contractor.

(iii) Prior to exercising any right to terminate a Major Equipment Purchase Order for default or breach by Contractor, Major Equipment Vendor shall give Owner at least ten (10) Business Days notice of Major Equipment Vendor's intent to terminate the Major Equipment Purchase Order and shall not terminate the Major Equipment Purchase Order if Owner, or its nominee, shall cure all defaults of Contractor with respect to the Facility which are susceptible of being cured by Owner within such extended cure periods, and if Owner, shall not itself be subject to any bankruptcy or other proceedings which would entitle Major Equipment Vendor to terminate the Major Equipment Purchase Order, then Major Equipment Vendor shall not have the right to terminate the Major Equipment Purchase Order by reason of the existence of default of the Contractor or bankruptcy or other proceedings relating to the Contractor.

(iv) Notwithstanding any other provision of the Major Equipment Purchase Order to the contrary, if the Major Equipment Purchase Order is terminated by reason of a default of Contractor, or as a result of the rejection or deemed rejection of the Major Equipment Purchase Order in a bankruptcy proceeding of Contractor, and if, within a reasonable period of time after such termination, the Owner by written notice to Major Equipment Vendor, requests Major Equipment Vendor to enter into a new contract directly with the Owner, then Major Subcontractor shall enter into a new contract directly with the Owner (or its nominee) within a reasonable period of time after such notice by the Owner. Such new contract shall commence as of the date of termination of the Major Subcontract and shall be upon all of the terms, covenants, conditions and agreements which were in force and effect on the date of termination of the Major Subcontract. Owner, simultaneously with the delivery of the new contract, shall pay to Major Subcontractor all sums then due and owing to Major Subcontractor under the Major Subcontract, plus all costs and expenses incurred by Major Subcontractor in connection with such termination, less the amount of any pending claim by Major Subcontractor under any lien bond, payment bond or third party undertaking or indemnity.

(v) Title to an item of Major Equipment shall pass to Contractor upon payment in full by Contractor to the Major Equipment Vendor for such item of Major Equipment.

ARTICLE 4 – FACILITY LICENSES, PERMITS AND APPROVALS

4.1 Owner Permits. Owner shall be responsible for obtaining, maintaining and paying for Owner Permits (including the COL) and for all communications with any Government Authorities regarding such Government Approvals. Contractor shall provide support to Owner in connection with such Government Approvals, including making personnel available to testify at formal and informal government proceedings, and providing all documents and information reasonably requested by Owner, including review and comment to sections prepared by others, and any amendments thereto, to address formal NRC licensing questions on a schedule that supports the Project Schedule and licensing support services. Contractor shall be compensated for such services on a Time and Materials Basis. Owner shall provide as much advance notice as practical for the testimony of Contractor's Personnel at proceedings before

Government Authorities. Contractor provides no assurance or guarantee that the COL or any other Owner Permit required to be obtained by Owner shall be obtained by Owner.

4.2 Contractor Permits. Contractor shall be responsible for obtaining, maintaining and paying for the Contractor Permits. Owner shall provide Contractor reasonable cooperation and assistance in obtaining and maintaining Contractor Permits.

4.3 ITAACs.

(a) Contractor shall be responsible for those ITAACs associated with each Unit as are set forth in the Design Control Document. Any new or additional ITAAC, or any changes or modification to the ITAAC contained in the Design Control Document that Owner proposes be added to Contractor's Scope of Work shall be subject to agreement by Contractor and Owner pursuant to Section 9.1(a) and, upon such agreement, shall entitle Contractor to a Change Order pursuant to Article 9.

(b) Contractor shall be responsible for conducting, or causing to be conducted the inspections, tests and analyses associated with each Unit's ITAAC within Contractor's Scope of Work. Upon completion of such inspections, tests and analyses, Contractor shall be responsible for preparing and delivering to Owner the Documentation or other deliverables to demonstrate and confirm that the related acceptance criteria associated with such inspections, tests and analyses as applicable to each Unit within Contractor's Scope of Work have been met.

ARTICLE 5 – QUALITY ASSURANCE

5.1 Quality Assurance.

(a) Contractor has sole responsibility for the quality assurance and quality control of the Work. Contractor has provided to Owner its quality assurance program consisting of each Consortium Member's Quality Assurance Program that has been approved by the NRC ("Quality Assurance Program"). The Quality Assurance Program and any changes thereto shall meet the requirement of 10 C.F.R. Part 50, Appendix B and ASME NQA-1 – 1994 and be accepted by the NRC and accepted by Owner. Contractor's Quality Assurance Program is subject to review and audit by Owner for compliance with 10 C.F.R. Part 50 Appendix B and ASME NQA-1 - 1994. Contractor has prepared AP1000 Project-specific clarifications and modifications with respect to the Quality Assurance Program and has set forth such items in the Project Quality Assurance Program Interface Plan ("PQAPIP"). The PQAPIP will be included in the Project Execution Plan and shall be delivered to Owner for its review and approval. Owner's review and acceptance of the PQAPIP shall not relieve Contractor from its obligations to comply with the requirements of this Agreement and 10 C.F.R. Part 50, Appendix B. The Quality Assurance Program and the PQAPIP will collectively be the "Project Quality Assurance Program" or "PQAP". Contractor shall provide Owner with five (5) copies of the PQAP and Quality Assurance Program or make them available electronically. Contractor shall follow the PQAP throughout its performance of the Work. The PQAP and associated policies and procedures shall address Contractor's Scope of Work, including, without limitation, systems, structures and components in a manner consistent with their classification with respect to their importance to nuclear safety (i.e., safety related, important to safety, non-safety related) or their

importance to the capacity, operability and reliability of the Facility as classified in the DCD. The PQAP shall support Owner's compliance with 10 C.F.R. Part 50, Appendix B and ASME NQA-1 – 1994 and shall be subject to review and audit by the Owner at the Owner's request. For purposes of the American Society of Mechanical Engineers (ASME) Code, Contractor shall be designated as Owner's agent.

(b) Subcontractor Quality Assurance. In accordance with the PQAP, Contractor shall also require Major Subcontractors to establish, implement and maintain appropriate quality assurance programs (which may either be the PQAP or such other quality assurance program capable of being audited to the requirements of the PQAP) for their respective portions of the Work consistent with the nuclear safety quality classification of their portion of the Work. Such programs shall be made available for review by Owner. Major Subcontractor audit reports shall be made available for review by Owner or its authorized representative. At its own cost, Owner or its authorized representative may participate in scheduled audits of Subcontractors performed by Contractor.

5.2 Reporting of Defects, Noncompliance, Failures and Breakdowns of QA Programs. Contractor shall comply with the provisions of 10 C.F.R. Part 21, "Reporting of Defects and Noncompliance," and 10 C.F.R. Part 50.55, "Conditions of construction permits, early site permits, combined license, and manufacturing licenses," in the performance of its obligations under this Agreement. Without limiting the foregoing, Contractor shall act as the "dedicating entity," as defined in 10 C.F.R. § 21.3 and 10 C.F.R. § 50.55(e)(1), and comply with the requirements of 10 C.F.R. § 21.21(c) and 10 C.F.R. § 50.55(e)(4). Contractor shall comply with the posting requirements of 10 C.F.R. § 21.6 and 10 C.F.R. § 50.55 at the Site and shall permit, and cause each Subcontractor to permit, the NRC to inspect records, premises, activities and basic components as necessary to accomplish the purposes of 10 C.F.R. Part 21, including permitting the NRC the opportunity to inspect records pertaining to basic components that relate to the identification and evaluation of deviations, and the reporting of defects and failures to comply, including any advice given to purchasers or licensees on the placement, erection, installation, operation, maintenance, modification, or inspection of a basic component. Contractor shall comply with the provisions of 10 C.F.R. § 50.55(e)(1)(iii)(C) for reporting any significant breakdown in any portion of the Contractor's or Subcontractor's quality assurance program conducted under the requirements of Appendix B to 10 C.F.R. Part 50 which could have produced a defect in a basic component. Contractor shall require in each contract with its first tier Subcontractors to perform any of the Services or to furnish any Equipment, at the Site or elsewhere, and that are subject to the provisions of 10 C.F.R. Part 21 and 10 C.F.R. 50.55, that such Subcontractor shall comply with the provisions of 10 C.F.R. Part 21 and 10 C.F.R. Part 50.55. Additionally, Contractor shall require that each Subcontractor include in each contract with its first tier Subcontractors to perform any of the Services or to furnish any Equipment, at the Site or elsewhere, and that are subject to the provisions of 10 C.F.R. Part 21 and 10 C.F.R. Part 50.55 a provision stating that such Subcontractor shall comply with the provisions of 10 C.F.R. Part 21 and 10 C.F.R. Part 50.55. Contractor shall, and shall require that each of its first tier Subcontractors, provide Owner with copies of all notices and other documentation that Contractor or such Subcontractor, as applicable, may disclose to the NRC pursuant to 10 C.F.R. Part 21 or 10 C.F.R. Part 50.55 concurrently with such disclosure to the NRC (or, if concurrent disclosure is not practical, as soon as reasonably practicable following such disclosure).

Additionally, each Subcontractor shall require that each of its first tier Subcontractors provide Owner with copies of all notices and other documentation that such Subcontractor or its Subcontractors, as applicable, may disclose to the NRC pursuant to 10 C.F.R. Part 21 or 10 C.F.R. Part 50.55 concurrently with such disclosure to the NRC (or, if concurrent disclosure is not practical, as soon as reasonably practicable following such disclosure).

5.3 Quality Control and Inspection Activities. Contractor shall be responsible to perform the quality control and inspection activities in accordance with the PQAP. The quality control and inspection activities shall be consistent with the nuclear safety quality classification of the system, structure or component under evaluation. The Persons performing quality assurance and control functions for Contractor shall have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions. Such Persons performing quality assurance and control functions shall report to a management level such that this required authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations, are provided.

5.4 Access and Auditing at Contractor Facilities. Contractor shall provide Owner and its authorized representatives with reasonable access during normal working hours to the Work at Contractor's facilities, and all pertinent documentation relating to the Work, for observation and inspection, including auditing of activities for conformance with the requirements of the PQAP and all requirements of this Agreement. Inspections and audits of Contractor shall be coordinated with Contractor.

5.5 Access and Audits at Subcontractors' Facilities. Contractor shall include in its Subcontracts with Major Subcontractors the right of Owner to have access to such Subcontractors' facilities as follows. During working hours, Owner and its authorized representatives shall have the right of access to Contractor's and Major Subcontractors' premises and working facilities for quality assurance and quality control activities. Contractor shall provide Owner and its authorized representatives with necessary information and assistance to carry out Owner's quality assurance and quality control activities. Quality assurance and quality control activities at Major Subcontractors shall be limited to participation in scheduled audits and execution of Witness Points identified as the Witness Points and Hold Points in the manufacturing and fabrication plans for the Equipment, such as in-process testing and final product review for acceptance. Quality assurance and quality control activities at Major Subcontractors include activities necessary to address quality issues which may arise at sub-suppliers. In cases where Contractor incurs additional cost or delay in the Project Schedule from its Major Subcontractors due to Owner's request to perform additional quality assurance and quality control activities beyond these activities, Contractor shall be entitled to a Change pursuant to Article 9. Contractor shall implement, and require its Major Subcontractors to implement measures necessary to be taken to ensure compliance with this Agreement where such measures are identified as a result of a quality assurance audit or surveillance carried out by Owner's authorized representatives. The rights of access described above are subject to restrictions which may be identified by a Major Subcontractor related to access to proprietary information, additional costs for access beyond routine audits and Witness Points, reasons of national security or access by foreign nationals.

5.6 Witness and Hold Points.

(a) Following the selection of a specific vendor for Equipment identified in Exhibit Q that is part of the Standard Plant and for which there are contractual Witness Points and Hold Points, Contractor shall identify the associated Witness Points and Hold Points via inclusion of the Witness Points and Hold Points in the manufacturing and fabrication plans for the Equipment. After review, Owner may identify additional Witness Points and Hold Points and Owner shall notify Contractor of any Owner-designated Witness Points or Hold Points that they shall attend. In cases where Contractor incurs additional cost or delay in the Project Schedule from its Major Subcontractors due to Owner's request to add additional Witness Points and/or Hold Points beyond those identified by Contractor, Contractor shall be entitled to a Change Order pursuant to Article 9. Contractor shall provide Owner access to or copies of these manufacturing and fabrication schedules for Equipment identified in Exhibit Q and the regular updates to these schedules, such that Owner has advance notice of approaching scheduled Witness Points and Hold Points. Owner shall be notified in writing by Contractor of Owner-designated Witness Points and Hold Points as soon as practicable but no later than ten (10) Business Days prior to the scheduled activity. Owner shall acknowledge the notification of Owner-designated Hold Points within five (5) Business Days and indicate whether or not it intends to attend the activity that is the subject of the Hold Point.

(b) Work may proceed with and beyond Owner-designated Witness Points in the absence of Owner's or its authorized representative's participation without a written waiver. Work may not proceed with or beyond Owner-designated Hold Points without a written waiver from Owner. If proper notification has been given and Owner has responded that it intends to attend the activity that is the subject of the Owner-designated Hold Point, but Owner or its authorized representative is unavailable at the designated time, or Owner does not respond as to whether or not it intends to attend the activity that is the subject of the Owner-designated Hold Point, the work shall not proceed, Contractor shall be entitled to a Change Order pursuant to Article 9. Requests by Owner to witness tests or conduct surveillance after the scheduled point in time designated for a Witness Point or Hold Point shall be accommodated by Contractor only if technically feasible, shall entitle Contractor to a Change Order pursuant to Article 9.

(c) Witnessing of tests or other surveillance by Owner shall be at Owner's expense. If Owner performs the surveillance or elects not to perform a surveillance, such surveillance or waiver shall not relieve Contractor of its obligations under this Agreement.

(d) Any nonconformance or deviation from design requirements for the Equipment listed in Exhibit Q which results in "repair" or "accept as is" dispositions to design requirements shall be submitted to Owner for its written approval, which shall not be unreasonably withheld. Repaired and reworked items shall be re-inspected to verify conformance to the requirements specified by the disposition. A nonconformance which represents significant conditions adverse to quality submitted for Owner's approval shall include the identification of the cause of the nonconformance and the corrective action to prevent recurrence.

5.7 Owner's Right to Inspect and Stop Work.

(a) Owner's Right to Inspect. Owner shall have the right to have its authorized representatives inspect the Work in order to assure that the Work complies with the requirements of this Agreement, including Contractor's PQAP. Inspection by Owner shall not be deemed to be supervision by Owner of Contractor and shall not relieve Contractor of any responsibility for performing the Work in accordance with this Agreement. Any acceptance or approval by Owner shall not be deemed to constitute final acceptance of same by Owner, but shall be only for the purpose of assuring that the Work complies with this Agreement. Owner may report to Contractor any unsafe or improper conditions or practices observed at the Site for action by Contractor in correction or enforcement.

(b) Defective Work. If Owner's inspection reveals any non-compliance or any other defects in any portion of Work, then Contractor shall, promptly upon its receipt of notice from Owner, take such actions as are required with respect to such defective Work in accordance with its Quality Assurance Program. If Contractor is not taking the actions required with respect to defective Work in accordance with the PQAP, Owner shall have the right to cause Contractor to take corrective action.

(c) Right to Stop Work for Cause. If Contractor fails to take corrective action for defective Work as required under Section 5.7(b), then Owner, by written order, may order Contractor to stop performance of the portion of the Work affected thereby, until the cause of such order has been eliminated. In addition, Owner, by written order, may order Contractor to stop performance if the activities of Contractor at the Site reasonably appear to Owner to cause or threaten to cause danger to life or damage to property. Contractor shall not be entitled to a Change Order for stop Work orders properly issued pursuant to the terms of this Section 5.7(c).

(d) Uncovering of Work. Prior to the commencement of the Warranty Period, in the event Owner requests that any Work be uncovered to determine whether it is deficient, Contractor shall be entitled to a Change Order pursuant to Article 9 unless the Work is found to be deficient. If the Work is found to be deficient, Contractor shall repair or replace it or take other appropriate corrective action. During the Warranty Period, the provisions of Article 14 shall apply to any Work that does not conform to the Warranties.

ARTICLE 6 – CONTRACT PRICE

6.1 Components of the Contract Price. The Contract Price is divided by Unit and by Consortium Member, as further described in Exhibit H. In accordance with the procedures set forth in Exhibit H, and by agreement of the Parties, portions of the Target Price may be moved to the Fixed Price or Firm Price during the performance of the Work.

6.2 Most Favored Customer. In the event that a First Wave Customer other than Owner (such Person, an "Other Customer") enters into a contract with Contractor for the engineering, procurement and construction of an AP1000 Nuclear Power Plant after the Effective Date but prior to December 31, 2008, and such Other Customer's contract (as of the date the price of such contract is finalized in accordance with the terms thereof, but not including subsequent adjustments to such price due to escalation, changes in target prices or change orders)

provides for a lower contract price on a \$/KWe basis than the Contract Price hereunder as such price is determined as of the Effective Date, and without regard to subsequent adjustments made to the Contract Price pursuant to Exhibit J or as a result of Changes, increases in the Target Price or increases in the Time and Materials Charges as such charges are estimated as of the Effective Date, and after adjustment for differences in scope, Site characteristics, technical requirements, the schedule for completion of the Other Customer's project, and other quantifiable factors that create price differentials between the Facility and the Other Customer's facility, Contractor shall offer to Owner a reduction in the Contract Price to a price equivalent to that provided to the Other Customer, after adjustment, as stated, for differences in scope, Site characteristics, technical requirements, the schedule for completion of the Other Customer's project, and other quantifiable factors that create price differentials between the Facility and the Other Customer's facility. Within a reasonable period of time following the execution of an engineering, procurement and construction contract with an Other Customer, Contractor shall furnish to Owner a letter stating that Contractor has performed the comparison required to determine if the provisions of this Section 6.2 are applicable and that, as a result thereof, either (i) that no reduction in the Contract Price hereunder is applicable or (ii) offering Owner a reduction in the Contract Price as provided for in this Section 6.2.

6.3 Future Fuel Agreement and Services Agreement.

(a) Westinghouse and Owner intend to enter into negotiations for establishing a long term services agreement and a fuel fabrication agreement, as provided below:

(i) The services agreement would be typical of existing alliance agreements that Westinghouse holds with its existing customers and would be tailored to both Parties' specific needs and business objectives. The contract structure would contain provisions for agreed upon exclusive scopes and preferred vendor scopes, and include provisions for price protections and performance incentives based on Westinghouse and overall Unit performance. The initial agreement would be for future services on Units 1, 2 and 3, starting on a mutually agreeable schedule.

(ii) The intent of the fuel fabrication agreement would provide Westinghouse the fuel fabrication for a period through year 2033, for Unit 1 fuel reloads beyond the current contract and the fuel fabrication for the first core and future reloads on Units 2 & 3 through 2033.

(iii) Throughout the development and negotiation of these agreements, each of Owner and Contractor will evaluate its individual business case to determine the prudence of entering into long term agreements. At any point during this period, either Party may terminate negotiations. In the event that Westinghouse and Owner have not, on or before December 30, 2008, entered into (x) services agreement for long term services, and/or (y) a fuel fabrication agreement for long term fuel fabrication for Owner's existing nuclear power plant at the V.C. Summer station and the Units, (each such agreement to be on mutually agreed terms and conditions) the Contract Price shall be increased pursuant to a Change Order by the amount of fifty million dollars (\$50,000,000) or a lesser amount based on the scope of any negotiated services.

(b) Owner shall use best efforts to engage Shaw to perform certain maintenance services for Owner, provided that Shaw and Owner mutually agree to commercially reasonable terms and conditions to govern Shaw's performance of such maintenance services.

ARTICLE 7 – PRICE ADJUSTMENT PROVISIONS

The amounts payable to Contractor under this Agreement (other than the Fixed Price portion of the Contract Price) shall be subject to the Price Adjustment Provisions described in Exhibit J. The Price Adjustment Provisions apply uniquely and separately for the Firm Price, Target Price and Time and Materials Charges as well as uniquely and separately for the individual Consortium Members. The specific indices will be selected to provide a representative price adjustment for the applicable items addressed in each cost category as set forth in Exhibit J. For the Firm Price, each of the payments is adjusted using the procedure set forth in Exhibit J. For the Target Price, payments are based on the actual charges incurred and the Price Adjustment Provisions are used to adjust the Target Price. For Time and Materials Charges, the rates will be adjusted as set forth in Exhibit J. In the event that any of the indices in Exhibit J are found by either Party to not be appropriately tracking inflation or other changes in costs, the Parties shall negotiate in good faith to determine substitute indices and/or an equitable adjustment to the Contract Price. If the Parties cannot agree on substitute indices and/or such equitable adjustment, either Party may refer the matter to dispute resolution in accordance with the provisions of Article 27.

ARTICLE 8 – PAYMENTS

8.1 Target Price and Time and Materials Payments.

(a) Payment for Target Price. Prior to the commencement of any Target Price Work, Contractor shall provide to Owner a projected payment plan, broken down by calendar quarter, for the remainder of 2008, and monthly thereafter, for the Target Price portion of the Contract Price (the "Payment Plan", to be appended to this Agreement as Exhibit F-2). By Monday, 5:00 p.m. Eastern time of each week, Contractor shall deliver to Owner an invoice (in electronic form) for the Target Price Work based on costs invoiced to Contractor or incurred by Contractor due to hours worked or otherwise during the prior week. Payment shall be due in the form of an electronic transfer of funds from Owner to Contractor's account by Thursday, 5:00 p.m. Eastern time of such week. On at least a monthly basis, the Parties shall review the Payment Plan and the actual documented costs incurred to determine whether changes are required to the Payment Plan to account for any amounts over or under invoiced by Contractor. The Payment Plan shall be revised and resubmitted to Owner by Contractor as a result of such review. In addition, cost and schedule performance shall be evaluated on a monthly basis, the results of which shall be provided to Owner, and corrective actions shall be developed to remedy deficiencies identified by this review.

(b) Payment for Time and Materials Charges. Unless otherwise agreed by the Parties, billings for Time and Materials Work shall be subject to the same procedures and payment processes as set forth in Section 8.1(a). Time and Materials Charges shall be set forth in separate invoices from invoices for the Target Price Work. In addition, cost and schedule performance shall be evaluated on a monthly basis, the results of which shall be provided to

Owner, and corrective actions shall be developed to remedy deficiencies identified by this review.

8.2 Milestone Payments. Contractor shall be paid for the portion of the Contract Price constituting the Firm Price and Fixed Price in accordance with the Milestone Payment Schedule in Exhibit F-1. The applicable portion of the Firm Price and Fixed Price shall be invoiced by Contractor upon the completion (or substantial completion as provided below) of each Milestone. Invoices for Milestone Payments for Major Equipment shall be issued separately from invoices for other Milestone Payments. The Milestone Payment due upon Substantial Completion of a Unit shall be two percent (2%) of the Firm Price and Fixed Price for the Unit. Submittal of each invoice by Contractor for a Milestone Payment shall constitute a representation by Contractor that it has performed and provided the Work required for such payment in accordance with this Agreement or otherwise covered by such invoice. Payment shall be due from Owner within twenty (20) Days for Milestone Payments for Major Equipment and within thirty (30) Days for other Milestone Payments, in each case, following receipt of the invoice. Milestones are not required to be completed in the sequence set forth in Exhibit F-1, nor must invoices for completed Milestones be submitted in the sequence set forth in Exhibit F-1, and Milestones may be performed and invoiced ahead of the time for the performance of such Work under the Project Schedule, provided that Contractor may not submit an invoice for a Milestone performed out of sequence or ahead of time to the extent that the total invoiced for Milestones during any calendar month would exceed the aggregate of the Milestones for such calendar month as set forth in Exhibit F-1 plus (a) twenty-five million dollars (\$25,000,000) or less, unless Owner has agreed to such out of sequence or early Milestone Payment, such agreement not to be unreasonably withheld; (b) more than twenty-five million dollars (\$25,000,000) but not more than fifty million dollars (\$50,000,000), Contractor has notified Owner at least ninety (90) Days in advance of submission of an invoice that would cause such amount to be exceeded, and Owner has agreed to such out of sequence or early Milestone Payment, such agreement not to be unreasonably withheld; and (c) more than fifty million dollars (\$50,000,000), Contractor has notified Owner at least one hundred eighty (180) days in advance of submission of an invoice that would cause such amount to be exceeded, and Owner has agreed to such out of sequence or early Milestone Payment. If agreed by Owner, Contractor shall have the option to invoice for substantially completed Milestones on a pro rata basis. The agreement between Owner and Contractor shall be set forth in a Change Order, provided, however, that the provisions pertaining to Change Disputes shall not apply to the request by Contractor to invoice for a Milestone on a pro rata basis or the Change Order resulting therefrom.

8.3 Final Payment. Upon achievement of Final Completion for each Unit, Contractor shall submit to Owner an invoice for the final Milestone Payment for such Unit and other payments due under this Agreement (the "Final Payment Invoice") which shall set forth the remaining amounts due to Contractor pursuant to this Agreement (minus any amounts that are still being held for Final Completion Punch List items for such Unit that cannot be completed until the next Nuclear Fuel re-load, as provided in Section 12.5). Payment of the Final Payment Invoice shall be due from Owner within thirty (30) Days of its submission to Owner. When submitting the Final Payment Invoice for a Unit, Contractor shall: (i) submit a written discharge, in form and substance reasonably satisfactory to both Parties, confirming that the total of the

Final Payment Invoice (minus any such Final Completion Punch List items) represents full and final settlement of the monies due to Contractor for the performance of the Work under this Agreement with respect to such Unit, (ii) include a waiver against any mechanic's and materialman's liens; provided that the waiver shall be conditioned on Contractor receiving payment pursuant to the Final Payment Invoice and (iii) with the Final Payment Invoice for the Second Unit, return all Sales Tax exemption certificates issued to Contractor and Subcontractors to Owner or provide a statement that all such certificates have been destroyed or have expired.

8.4 Supporting Documentation; Payment Disputes.

(a) Contractor shall submit invoices in a format agreed to by Owner. Contractor shall make available such documentation and materials as Owner may reasonably require substantiating Contractor's right to payment of any invoice. If any invoice is deficient in any material respect, Contractor may be required by Owner to resubmit that invoice in proper form; provided, however, that Owner shall pay any portion of it that is not deficient or subject to dispute. Owner shall review each invoice and shall make exceptions, if any, by providing Contractor with written notice by the earlier of (i) such date the invoice is paid by Owner or (ii) fifteen (15) Days after Owner receives the invoice along with evidence which reasonably documents the contractual basis of such exceptions. If Owner provides no exceptions within such time, Owner shall pay Contractor within the time specified for payment above.

(b) Payment shall not waive Owner's right to dispute an invoice. Any amount of an invoice that Owner disputes shall be resolved in accordance with Article 27.

(i) Should such dispute not be settled within thirty (30) Days of the due date, Owner shall pay all disputed amounts including, without limitation, amounts disputed with respect to a Change (except Owner may hold back ten percent (10%) of disputed amounts which exceed one million dollars (\$1,000,000)).

(ii) Once the dispute is resolved, Owner shall pay any additional amount due or Contractor shall refund any amount by which it was overpaid, as applicable, within thirty (30) Days after the date of the final resolution, together with interest at a rate equal to the Prime Rate plus one percent (1%) per annum, applied from (i) the original due date of the payment for Firm Price or Fixed Price payments and Time and Materials Charges or (ii) the original due date for Target Price payments, until paid (or in the case of any overpayment, from the date paid until refunded by Contractor).

(c) If for any reason Owner fails to pay Contractor for all undisputed sums due and owing by the due date or, for disputed amounts, by the date required as set forth in (b)(i) above, Contractor shall notify Owner of the overdue payment, and a late payment charge shall accrue at a rate equal to the Prime Rate plus one percent (1%) per annum. If Owner fails to make payment of any undisputed amount due within seven (7) Days following the due date or fails to make payment of any disputed amount within seven (7) Days following the date set forth in (b)(i) above, Contractor shall provide a second notice to Owner in writing. If Owner fails to make payment of the undisputed amount due within fifteen (15) Days following its receipt of this second notice, Contractor has the right to suspend performance of the Work as if Owner had ordered a suspension in accordance with Section 22.1.

(d) Owner may take advantage of any discount identified in Contractor's invoice for prompt payment.

8.5 No Acceptance by Payment. Owner's payment of any invoice does not constitute approval or acceptance of any item or cost in that invoice nor shall Owner's payment be construed to relieve Contractor of any of its obligations under this Agreement.

8.6 Security for Payment and Performance.

(a) Simultaneously with the execution of this Agreement, (i) Westinghouse agrees to supply to Owner a parent company guaranty from Toshiba in the form set forth as Exhibit I-1 and (ii) Stone & Webster agrees to supply to Owner a parent company guaranty from Shaw in the form set forth as Exhibit I-2.

(b) Following the Effective Date, and upon Owner's request, Stone & Webster shall provide a payment and performance bond in the name of Stone & Webster from an issuer having a long-term senior unsecured debt rating of A- or higher by Standard & Poor's or A3 or higher by Moody's, with total assets of at least ten billion dollars (\$10,000,000,000) to secure Stone & Webster's obligations hereunder through Substantial Completion (the "Stone & Webster Bond") as soon as reasonably practicable but in no event later than sixty (60) Days after Contractor's receipt of a written notice from Owner requiring Contractor to provide the Stone & Webster Bond. If Stone & Webster procures the Stone & Webster Bond pursuant to this Section, Owner shall be responsible for the cost of the Stone & Webster Bond which shall be a direct pass-through to Owner, without any markups whatsoever, including without limitation overhead or profit. The value of the Stone & Webster Bond shall be adjusted on an annual basis to be equal to fifteen percent (15%) of the highest, projected three (3) months billing for Stone & Webster's portion of the Work during the applicable year as set forth in Exhibit F-2 but, under no circumstances, shall the value of the bond be less than ten million dollars (\$10,000,000) or such lower amount as mutually agreed by the Parties, or greater than one hundred million dollars (\$100,000,000). Stone & Webster shall not be required to continue to maintain the Stone & Webster Bond in the event that either of Shaw's Standard & Poor's or Moody's senior unsecured credit rating (or issuer rating in the absence of a senior unsecured debt rating) ("Credit Rating") is equal to BBB (by Standard and Poor's) or Baa2 (by Moody's), or higher. Conversely, subject to the provisions of this Section, such requirement of Stone & Webster to provide the Stone & Webster Bond shall be renewed if Shaw's Credit Rating subsequently drops below those ratings.

(c) Following the Effective Date, and upon Owner's request, if the Credit Rating of Toshiba is below both of BBB (by Standard and Poor's) and Baa2 (by Moody's), Westinghouse shall provide a payment and performance bond in the name of Westinghouse from an issuer having a long-term senior unsecured debt rating of A- or higher (by Standard & Poor's) or A3 or higher (by Moody's), with total assets of at least ten billion dollars (\$10,000,000,000) to secure Westinghouse's obligations hereunder through Substantial Completion (the "Westinghouse Bond") as soon as reasonably practicable but in no event later than sixty (60) Days after Contractor's receipt of a written notice from Owner requiring Contractor to provide the Westinghouse Bond. If Westinghouse procures the Westinghouse Bond pursuant to this Section, Owner shall be responsible for the cost of the Westinghouse Bond which shall be a direct pass-through to Owner, without any markups whatsoever, including without limitation

overhead or profit. The value of the Westinghouse Bond shall be adjusted on an annual basis to be equal to fifteen percent (15%) of the highest, projected three (3) months billing for Westinghouse's portion of the Work during the applicable year as set forth in Exhibit F-1 but, under no circumstances, shall the value of the bond be less than ten million dollars (\$10,000,000) or such lower amount as mutually agreed by the Parties, or greater than one hundred million dollars (\$100,000,000). In the event that Westinghouse provides the Westinghouse Bond pursuant to this Section, and subsequently Toshiba's Credit Rating is equal to or greater than either of BBB (by Standard and Poor's) or Baa2 (by Moody's), Westinghouse shall not be required to continue to maintain the Westinghouse Bond. Conversely, subject to the provisions of this Section, such requirement of Westinghouse to provide the Westinghouse Bond shall be renewed if Toshiba's Credit Rating subsequently drops below those ratings.

(d) Following the Effective Date, if at any time the Credit Rating of SCE&G or Santee Cooper, as applicable, is below both of BBB (by Standard and Poor's) and Baa2 (by Moody's), then SCE&G or Santee Cooper, as applicable, shall be required to provide Contractor with an irrevocable, standby letter of credit in form and substance acceptable to Contractor ("Owner Letter of Credit") from a bank having a long-term senior unsecured debt rating of A- or higher (by Standard & Poor's) or A3 or higher (by Moody's), with total assets of at least ten billion dollars (\$10,000,000,000) as soon as reasonably practicable but in no event later than sixty (60) Days after Owner's receipt of a written notice from Contractor. The value of the Owner Letter of Credit shall be adjusted on an annual basis to be equal to fifteen percent (15%) of the highest, projected three (3) months billing for the Work during the applicable year as set forth in Exhibit F-1 and Exhibit F-2 but, under no circumstances, shall the value of the Owner Letter of Credit be less than ten million dollars (\$10,000,000), or greater than one hundred million dollars (\$100,000,000). In the event that Owner provides the Owner Letter of Credit pursuant to this Section, and subsequently the Credit Rating of SCE&G and/or Santee Cooper, as applicable, is equal to or greater than either of BBB (by Standard and Poor's) or Baa2 (by Moody's), Owner shall not be required to continue to maintain the Owner Letter of Credit. Conversely, subject to the provisions of this Section, such requirement of Owner to provide the Owner Letter of Credit shall be renewed if SCE&G or Santee Cooper's, as applicable, Credit Rating subsequently drops below those ratings. If the Parties agree to reduce the value of the Stone & Webster Bond or the Westinghouse Bond pursuant to Section 8.6(b) or (c), then such reduction shall also be applied to the Owner Letter of Credit.

8.7 Separate Payments for Consortium Members. Each Contractor invoice shall designate the amount of the payment due to each Consortium Member. Owner shall make payment to each Consortium Member as indicated.

ARTICLE 9 – CHANGES IN THE WORK

9.1 Entitlement to Change Order. The following, to the extent that they impact the obligations of Contractor under this Agreement (each, a "Change"), shall entitle Contractor to a Change Order in accordance with the provisions of this Article 9:

(a) any addition to, deletion from, or modification of the Facility or any change in the Work, that is agreed by the Parties or that arises as a result of the issuance of the COL;

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- (b) an Uncontrollable Circumstance;
- (c) a Change in Law;
- (d) issuance of new ITAAC or revisions to ITAAC in existence as of the Effective Date;
- (e) Contractor encountering conditions at or affecting the Site not made known to Contractor or are not evident or readily discernible upon Contractor's inspection of the Site as provided in Section 3.6(d) and/or encountering Hazardous Materials for which it is not responsible;
- (f) the circumstances that entitle Contractor to a Change Order as provided for in Section 5.6;
- (g) uncovering of the Work (unless the Work is found to be deficient) as provided for in Section 5.7(d);
- (h) any breach of this Agreement by Owner of its obligations under this Agreement (including, without limitation, the obligations under Section 3.6) or delay or other demonstrable adverse impact on Contractor's or a Subcontractor's activities under this Agreement resulting from delay by Owner in giving any required approvals or in performing any of Owner's responsibilities under Section 3.6 (other than any delay for which Contractor is responsible) or interference by Owner or Owner's Personnel or Invitees (other than Contractor or its Subcontractors or their Personnel or Invitees);
- (i) suspension of the Work pursuant to Article 22 except to the extent that it arises as a result of Contractor's act, omission or default;
- (j) failure of Owner to issue the Full Notice to Proceed or Limited Notices to Proceed in time to support Contractor's required activities to maintain the Project Schedule as further described in Section 3.3;
- (k) an instruction by Owner to Contractor to accelerate the performance of the Work accepted by Contractor; or
- (l) any other event or circumstance specifically identified in this Agreement as constituting a Change or entitling Contractor to a Change Order.

9.2 Owner-Directed Changes. It is the intent of the Parties to preserve the design of the Standard Plant, including the approach to the supply chain, construction, licensing, operation and maintenance. However, Owner may request any Change, provided it is technically feasible, with the understanding that such Change may cause the Facility to no longer qualify as a Standard Plant, subject again to Sections 9.3 through 9.5.

9.3 Effect of Changes. To the extent that a Change adversely affects Contractor's or its Subcontractors' ability to perform the Work, increases the costs for the Work, affects

Contractor's ability to achieve the Net Unit Electrical Output Guarantee or Warranties or its other obligations under this Agreement, or causes a delay in the Project Schedule, Contractor shall be entitled to an equitable adjustment as appropriate to the Contract Price, the Project Schedule, the Milestone Payment Schedule, the Guaranteed Substantial Completion Dates, the Scope of Work and/or such other parts of this Agreement as may be affected by such Change. Similarly, to the extent that a Change enhances Contractor's or its Subcontractors' ability to perform the Work, reduces the cost of the Work or its other obligations under this Agreement, or shortens the Project Schedule, Owner shall be entitled to an equitable adjustment as appropriate to the Contract Price, the Project Schedule, the Milestone Payment Schedule, the Guaranteed Substantial Completion Dates, the Scope of Work and/or such other parts of this Agreement as may be affected by such Change. Any increase or decrease in the Contract Price resulting from a Change shall be determined and shall be payable as follows:

(i) by fixed or firm price in an amount proposed by Contractor and accepted by Owner (to be payable as the Parties may agree); or

(ii) if Owner does not accept the fixed or firm price amount proposed by Contractor, on a Time and Materials Basis, using the rates in Exhibit G, provided that for any such Change, Contractor shall have the right to make a Claim for the costs of Work affected by the Change that are not covered in the Time and Materials Charges for the Change. Such additional costs shall be subject to audit in accordance with the terms of Section 25.4.

9.4 Change Orders. Contractor shall submit written notice of a Change to Owner as soon as reasonably practicable under the circumstances after becoming aware of the Change. Such notice shall include (or where not possible, be followed by) notice of the following as such information becomes available:

- (a) details of the effect of the Change on the provisions of the Agreement;
- (b) options to mitigate the costs or delays or enhance the savings associated with the Change;
- (c) an evaluation of the impact on the Licensing Basis as of the date of the Change;
- (d) a written proposal for executing the Work insofar as it has changed; and
- (e) changes that are needed to the Milestone Payment Schedule so that it reflects the changes to the Project Schedule.

Change Orders shall be agreed to in writing by the Parties. Each Change Order shall show the adjustments agreed to by the Parties. If Owner requests a proposal for a Change in the Work from Contractor or should Contractor submit a notice for a Change under Section 9.1, a Change Order shall be issued to reimburse Contractor for any charges incurred, or to compensate Owner for any resulting savings, including but not limited to charges for or savings in estimating services, design services or preparation of proposed revisions to the Agreement. Any changed

Work performed by Contractor prior to the execution of a Change Order shall be at Contractor's risk.

9.5 Disputes over Changes. In the event the Parties are unable to agree on any aspect of a Change Order, the dispute shall be resolved in accordance with the provisions of Article 27.

9.6 Changes for Contractor's Convenience.

(a) Contractor shall have the right to take any action at its own expense that is generally consistent with this Agreement and that is reasonably necessary to meet the requirements of this Agreement, including performing its obligations in accordance with Good Industry Practices. With respect to Equipment or materials or aspects of the Work that are part of the Standard Plant, Contractor shall have the right to make substitutions of Equipment or materials set out in the Specifications, or deletions from or modifications to the Facility or the Work as described in the Scope of Work or the Licensing Basis, so long as such substitutions, deletions or modifications are equivalent or better as to function and reliability on a life cycle basis and do not cause the Equipment or materials or aspects of the Work to no longer conform to the Standard Plant. Contractor shall provide notice of and the rationale for any such Change to Owner.

(b) In the event that Contractor desires to make substitutions of Equipment or materials set out in the Specifications, or deletions from or modifications to the Facility or the Work as described in the Scope of Work or the Licensing Basis and such action (i) would cause the Equipment or materials or such aspect of the Work (following the finalization of the design of the applicable system, component or structure) to no longer conform to the Standard Plant, or (ii) would be contrary to the COL or the DCD, Contractor shall obtain Owner's written approval prior to undertaking such Change.

(c) In the event that Contractor desires to make material modifications to the Non-Standard Plant that are contrary to the COL or Contractor's issued station P&IDs, one-line electrical diagrams or the equipment arrangement drawings, Contractor shall obtain Owner's written approval thereof. Changes to Facility drawings and other documentation shall be documented and documents controlled in accordance with Contractor's PQAP and shall be submitted or made available to Owner for its review, but such Changes shall not be subject to Owner's approval.

(d) Owner's prior written approval shall not be required for a Field Change that is made in accordance with Contractor's PQAP.

(e) Contractor shall provide its design change and configuration control procedure(s) to Owner for its review and comment.

(f) Contractor shall not be entitled to any adjustment to the Contract Price, Guaranteed Substantial Completion Date, Net Unit Electrical Output Guarantee, Warranties or any other term or condition of this Agreement in respect of any Change permitted pursuant to this Section 9.6. The provisions of this section 9.6(f) do not limit any of Contractor's rights to such adjustments for Changes that are made pursuant to Sections 9.1 or 9.2.

9.7 Optional Services and Equipment. The Parties acknowledge and agree that Exhibit A sets forth certain additional Services and Equipment, one or more of which, at the option of Owner, shall be included in the Work. If Owner desires to exercise such option, it shall provide Contractor written notice thereof, in which case such item shall be included in the Work and the Firm Price and/or Fixed Price and such other provisions shall be modified as set forth in Exhibit A.

9.8 Changes in Import Fees and Duties. In the event that there is a Change in Law after the Effective Date that results in a reduction of the import fees or duties on the Equipment to be paid by Contractor, Owner shall be entitled to a Change Order for a reduction in the Contract Price to reflect such reduction in import fees or duties in accordance with the provisions of this Article 9.

ARTICLE 10 – UNCONTROLLABLE CIRCUMSTANCES

10.1 Performance Excused. No Party shall be considered to be in default or in breach of its obligations under this Agreement to the extent that performance of such obligations is prevented, impacted or delayed by any Uncontrollable Circumstance which arises. Amounts due and payable for Work performed shall not be excused due to an Uncontrollable Circumstance. Without limiting Contractor's right to seek a Change Order, to the extent the Work is affected by an Uncontrollable Circumstance, Contractor shall work diligently to cure, remove, otherwise correct, minimize and contain costs and expenses attendant on or arising from each Uncontrollable Circumstance. In the event that an Uncontrollable Circumstance affects the Work and such Uncontrollable Circumstance has affected work for other AP1000 Nuclear Power Plant customers in the same manner and to the same extent as the Work hereunder, and the actions to be taken by Contractor to mitigate the effects of such Uncontrollable Circumstance and to resume full performance of Work using commercially reasonable efforts are the same for Owner and such other customers, Contractor shall not alter the priority between the Guaranteed Substantial Completion Dates set forth in the Project Schedule and the guaranteed substantial completion dates of such other customers as a result of such Uncontrollable Circumstance. Contractor shall provide information to Owner to explain its determination of the manner in which the Uncontrollable Circumstance has affected Owner and such other customers.

10.2 Notice. If a Party's performance of its obligations under this Agreement is prevented, impacted or delayed by an Uncontrollable Circumstance, then it shall notify the other Party of the obligations, the performance of which is prevented, impacted or delayed, and the nature and cause of the event in writing within thirty (30) Days after the notifying Party or its Project Director becomes aware of the Uncontrollable Circumstance. The Party affected by an Uncontrollable Circumstance shall provide the other Party with weekly updates (i) estimating its expected duration, the cost of any remedial action, and the probable impact on the performance of its obligations hereunder, (ii) of the actions taken to remove or overcome the Uncontrollable Circumstance and (iii) of the efforts taken to mitigate or limit damages to the other Party. The Party affected by an Uncontrollable Circumstance shall also provide written notice to the other Party when it ceases to be so affected.

ARTICLE 11 – TESTING**11.1 Scope and Objective of Testing.**

(a) The scope of testing associated with this Article covers that testing which takes place for each Unit at the Site. The testing that shall be performed on-Site consists of Construction and Installation Tests, Preoperational Tests, Startup Tests and the Performance Test, each as described in this Article 11. Contractor shall provide on a Time and Materials Basis the assistance to Owner during the Preoperational Tests, the Startup Tests and the Performance Test (including without limitation Technical Support) required hereunder.

(b) The "Joint Test Working Group" consists of an organizational group of representative personnel from each Party performing testing services, technical supervision and/or field support working with Owner's operating organization. The Joint Test Working Group shall oversee the implementation of the Preoperational Tests program and the Startup Tests program, including planning, scheduling and performance of all Preoperational Tests and Startup Tests. Owner shall delegate to Contractor the implementation and direction of the Joint Test Working Group. Contractor shall have overall responsibility and authority for technical direction of the initial test program, consisting of the Construction and Installation Tests, and Preoperational Tests for conducting those tests in accordance with the Project Schedule, and will act as the chairman of the Joint Test Working Group. Upon Unit Mechanical Completion, the Joint Test Working Group chairman will continue to have overall responsibility and authority for the technical direction of the Start-up Test program, but operation and control of the Unit shall reside entirely with Owner. Owner shall be responsible for conducting the Startup Tests and the Performance Tests in accordance with the Project Schedule and any delay in performance of the tests not due to the fault of Contractor or its Personnel shall entitle Contractor to a Change Order pursuant to Article 9. The Joint Test Working Group shall review and evaluate Construction and Installation Tests, Preoperational Tests and Startup Tests results and test turnover packages and recommend acceptance of the Turnover to Owner. Owner is responsible for a startup administrative manual and administrative procedures that provide detailed requirements and govern the execution of activities associated with the conduct of the test program, including the organization, structure and functional relationships of the Joint Test Working Group and the startup organization. The startup administrative manual shall provide direction for interface control of the internal and external transfer of information, design data, test results and other documents from one organization to another and the Turnover of systems and Equipment from Contractor to Owner. The startup administrative manual shall be prepared by Contractor for Owner on a Time and Materials Basis.

11.2 Construction and Installation Tests.

(a) The adequacy of construction and installation of components and systems shall be verified by construction inspection and installation tests. During the construction period, Contractor erects the structure, installs plant equipment and performs construction verification and inspection tests. All of these activities are executed, controlled, and documented in accordance with Contractor's approved procedures.

During construction, Contractor completes the Construction and Installation Test program in which various electrical and mechanical tests are performed including but not limited to the following:

- Cleaning and flushing
- Hydrostatic testing
- Checks of electrical wiring
- Valve testing
- Energization and operation of equipment
- Calibration of instrumentation

(b) During construction, Contractor completes the building of components associated with the various systems. The associated piping, wiring, equipment, and controls are verified to be installed in accordance with approved final design drawings. Construction and Installation Tests are performed and all appropriate documentation and exceptions to construction verification or tests, or incomplete tests shall be recorded as Turnover exceptions. On a system basis, completion of this program demonstrates that the system is ready for preoperational testing. The system shall be turned over to the Joint Test Working Group.

11.3 Preoperational System Tests. Following the Construction and Installation Tests of the particular components and systems, the preoperational system tests are conducted. Activities during the Preoperational Tests are conducted in accordance with a Startup Administrative Manual as provided in the Project Execution Plan. Initially, the Joint Test Working Group prepares the system/components for dynamic testing. Systems are flushed, tuned, and prepared for preoperational and acceptance testing. The Joint Test Working Group, while coordinating any remaining functional testing, shall typically direct Owner's operations personnel in the initial starting and operation of the various systems.

(a) Preoperational Tests shall be performed to demonstrate that the components and systems perform in accordance with selected design requirements so that initial Nuclear Fuel loading, initial criticality, and subsequent power operation can be safely undertaken in accordance with Law and applicable Government Approvals. Preoperational Tests at elevated pressure and temperature are referred to as hot functional tests. Contractor shall provide ten (10) Days advance notice to Owner of the scheduled testing dates via updates to the Project Schedule.

The general objectives of the Preoperational Test program are the following:

- Demonstrate that essential plant components and systems, including alarms and indications, meet appropriate requirements based on the design.

- Provide documentation of the performance and condition of the components and systems.
- Provide baseline test and operating data on equipment and systems for future use and reference.
- Operate Equipment for a sufficient period to demonstrate performance in accordance with the Preoperational Test procedures.
- Demonstrate that the systems operate on an integrated basis.

Abstracts for the Preoperational Tests for portions of systems/components that perform safety-related functions; perform defense-in-depth functions; contain, transport, or isolate radioactive material; and for other applicable systems are specified in Chapter 14 of the Design Control Document.

(b) Contractor shall develop the Preoperational Test procedures consistent with its procedures for the Standard Plant and shall provide the Preoperational Test procedures to Owner in advance of the testing. A team referred to as the "Preoperational Test Group" shall be established by the Joint Test Working Group and be manned by each Party's personnel as mutually agreed by the Parties. The Preoperational Test Group shall consist of engineering test leads and test personnel. The Preoperational Test Group is responsible for conducting the Preoperational Tests in accordance with the Project Schedule.

(c) Facility equipment used in the performance of Preoperational Tests shall be operated by Owner in accordance with appropriate operating procedures, thereby giving Owner's operating staff an opportunity to gain experience in using these procedures and demonstrating their adequacy prior to plant initial criticality.

(d) Contractor shall review the results of the Preoperational Tests with the Preoperational Test Group and notify Owner when it may proceed with the Startup Test program.

11.4 Startup Tests Objectives and Protocol.

(a) The Startup Test program begins with initial Nuclear Fuel loading after the Preoperational Tests necessary for Nuclear Fuel loading have been successfully completed. Startup Tests can be grouped into four broad categories:

- Tests related to initial Nuclear Fuel loading.
- Tests performed after initial Nuclear Fuel loading but prior to initial criticality.
- Tests related to initial criticality and those performed at low power (less than five percent (5%)).
- Tests performed at power levels greater than five percent (5%)

During performance of the Startup Test program, Owner's operating staff shall have the opportunity to obtain practical experience in the use of appropriate operating procedures while a Unit progresses through heatup, criticality, and power operations.

- (b) The general objectives of the Startup Test program are to:
- Install the Nuclear Fuel in the Unit reactor vessel in a controlled and safe manner.
 - Verify that the Unit reactor core and components, equipment, and systems required for control and shutdown have been assembled according to design and meet specified performance requirements.
 - Achieve initial criticality and operation at power in a controlled and safe manner.
 - Verify that the operating characteristics of the Unit reactor core and associated control and protection equipment are consistent with design requirements and accident analysis assumptions.
 - Obtain the required data and calibrate equipment used to control and protect the Facility.
 - Verify that the Unit responds to the transient tests as described in the Design Control Document.
 - Verify the operating characteristics of the Unit secondary plant equipment (turbine, generator, isophase bus duct and main power transformer, heater balance, main steam, extraction steam, steam dump, condenser, condensate, feedwater, make-up water, cooling tower, main feedwater pumps, etc.) and associated control equipment.

Abstracts of the Startup Tests are provided in Chapter 14 of the Design Control Document. Contractor shall develop the Startup Test procedures per the guidelines documented in Chapter 14 of the Design Control Document, in accordance with its procedures for the Standard Plant and shall provide the Startup Test procedures to Owner in advance of the testing. A team referred to as the "Startup Test Group" shall be established by the Joint Test Working Group and be manned by each Party's personnel as mutually agreed by the Parties. The Startup Test Group shall consist of engineering test leads and test personnel. The Startup Test Group is responsible for conducting the Startup Tests in accordance with the agreed upon Project Schedule. Contractor shall provide Technical Support to Owner during these tests.

(c) Contractor shall give notice to Owner of the date (the "Ready for Startup Test Date") when the Unit is ready, or would have been ready within the next ninety (90) Days except for a delay caused by Owner or its Personnel or resulting from an Uncontrollable Circumstance, for the Startup Tests on such Unit to begin; provided, however, that such notice shall not be given until the Construction and Installation Tests are completed and the

Preoperational Tests are underway such that the Unit will be ready for Startup Tests within ninety (90) Days from such notice.

(i) In the event of any such delay, the provisions of Article 9 shall apply. If the Work is suspended as a result of the delay, the Parties shall determine as part of the Change Order process such matters as (A) maintenance procedures for the Unit to be followed by Owner until the Startup Test can occur, (B) whether or not Contractor should demobilize its forces for the duration of the suspension, (C) if demobilization is to occur, Contractor Personnel that shall either remain on the Site and/or be permitted to examine the Unit and Owner's maintenance records on a routine basis to determine whether the agreed maintenance procedures are being followed and (D) validation procedures to be undertaken on the Unit to re-determine its readiness for the Startup Test prior to conducting the Startup Test.

(ii) To the extent that a delay caused by Owner or its Personnel or resulting from an Uncontrollable Circumstance delays any Startup Test by more than one hundred eighty (180) Days from the Ready for Startup Test Date, Contractor shall be entitled to the Milestone Payments that would be due upon or prior to Startup Test Completion, minus the direct costs attributable to the Technical Support to have been provided by Contractor for such Startup Test(s).

(iii) At such time as Owner is ready for the Startup Test to be conducted, Contractor shall (if applicable) re-mobilize at the Site on a mutually agreed date and shall proceed to provide the Technical Support required for the Startup Test, followed by the Performance Test and the other activities required to achieve Substantial Completion and Final Completion. Prior to initiating the Startup Test, Contractor shall have the right, pursuant to the agreed validation procedures determined as described in clause (i) above, to determine whether any degradation of the Unit has occurred. If degradation of the Unit has occurred, Contractor shall be entitled to a Change Order pursuant to Article 9 for the costs and time required to perform corrections to the Unit to return it to a state ready for the Startup Test.

(iv) If the delay caused by Owner or its Personnel or resulting from an Uncontrollable Circumstance delays any Startup Test by more than one (1) year from the Ready for Startup Test Date, then (x) the Startup Test shall be deemed to have been completed and Substantial Completion shall be deemed to have occurred for purposes of the Warranties, Section 22.2 and any other provisions of the Agreement pertaining to the Guaranteed Substantial Completion Date; (y) Contractor shall be entitled to the remaining Milestone Payments; and (z) Final Completion shall be deemed to have occurred provided that Contractor completes such other Work that can be completed notwithstanding the inability to conduct the Startup Test and Performance Test. At such time, if any, as Owner is ready for the Startup Test to be conducted, Contractor's sole responsibility hereunder with respect to such Startup Test shall be to provide Technical Support for the testing on a Time and Materials Basis.

11.5 Performance Tests.

(a) Contractor shall develop the Performance Test procedures consistent with its procedures for the Standard Plant and shall provide the Performance Test procedures to Owner six (6) months in advance of the testing for review. Performance Test procedures must

be approved by Owner, such approval not to be unreasonably withheld. Owner shall provide all consumables, semi-skilled and skilled labor, fully trained and licensed operators and any other material or services required for the tests. Contractor shall maintain a minimal construction staff and labor on Site to support the testing process.

(b) A test (the "Net Unit Electrical Output Test") shall be run to determine whether the Unit meets the Net Unit Electrical Output Guarantee. The Net Unit Electrical Output Test for the Unit shall be conducted in general compliance with Power Test Code 46 (PTC-46) with the NSSS power no less than 99.5% of rated power measured using the Secondary Calorimetric Methodology and for the periods and duration discussed below. The test shall consist of four test runs at least 2 hours in duration. If upon evaluation of the data more than two of the test runs are found unacceptable for reasons of equipment failure or environmental instability, additional runs will be made. Test run duration may be extended if necessary to reduce the random uncertainty in the test results to less than 0.25%. Data collected within each test run will be averaged and the results corrected to guarantee reference conditions. The final Net Unit Electrical Output shall be the average of the corrected net electrical output for all of the successful test runs.

Corrections shall be applied to the measured net electrical output for NSSS power, electrical power factor at the high side of the main step-up transformer, ambient wet and dry bulb temperature and temperature of the makeup water to the cooling tower.

The Net Unit Electrical Output Test for the Unit shall be determined during a period of continuous operation of one hundred (100) hours. Such Net Unit Electric Output Test shall be satisfactorily completed when the Unit has demonstrated its capability of meeting the Net Unit Electrical Output Guarantee as described above. The measurement frequency shall be in compliance with PTC-46 throughout the test.

(c) Contractor shall give notice to Owner of the date (the "Ready for Performance Test Date") when the Unit is ready, or would have been ready within the next ninety (90) Days except for a delay caused by Owner or its Personnel or resulting from an Uncontrollable Circumstance, for the Performance Test on such Unit to begin; provided, however, that such notice shall not be given until the Construction and Installation Tests and the Preoperational Tests are completed and the Startup Tests are underway and would be completed within the next ninety (90) Days unless there has been a delay as described in Section 11.4(c). In the event that there has been a delay in conducting the Startup Test due to a delay caused by Owner or its Personnel or resulting from an Uncontrollable Circumstance, then the Ready for Performance Test Date shall be one hundred eighty (180) Days after the Ready for Startup Test Date *plus* the number of Days of performance of the Performance Test if performed pursuant to the original schedule for the test *plus* the number of Days of any delay incurred in performance of the Startup Test that results from circumstances other than a delay caused (i) by Owner or its Personnel or (ii) resulting from an Uncontrollable Circumstance.

(i) In the event of any such delay, the provisions of Article 9 shall apply. If the Work is suspended as a result of the delay, the Parties shall determine as part of the Change Order process such matters as (A) maintenance procedures for the Unit to be followed by Owner until the Performance Test can occur, (B) whether or not Contractor should

demobilize its forces for the duration of the suspension, (C) if demobilization is to occur, Contractor Personnel that shall either remain on the Site and/or be permitted to examine the Unit and Owner's maintenance records on a routine basis to determine whether the agreed maintenance procedures are being followed and (D) validation procedures to be undertaken on the Unit to re-determine its readiness for the Performance Test prior to conducting the Performance Test.

(ii) To the extent that a delay caused by Owner or its Personnel or resulting from an Uncontrollable Circumstance delays any Performance Test by more than one hundred eighty (180) Days from the Ready for Performance Test Date, Contractor shall be entitled to the Milestone Payment that would be due upon Substantial Completion, minus the direct costs attributable to the Technical Support to have been provided by Contractor for such Performance Test.

(iii) At such time as Owner is ready for the Performance Test to be conducted, Contractor shall (if applicable) re-mobilize at the Site on a mutually agreed date and shall proceed to conduct the Performance Test, followed by the other activities required to achieve Substantial Completion and Final Completion of the Unit. Prior to initiating the Performance Test, Contractor shall have the right, pursuant to the agreed validation procedures determined as described in clause (i) above, to determine whether any degradation of the Unit has occurred. If degradation of the Unit has occurred, Contractor shall (without duplication of Changes to which Contractor is entitled under Section 11.4(c)(iii)) be entitled to a Change Order pursuant to Article 9 for the costs and time required to perform corrections to the Unit to return it to a state ready for the Performance Test.

(iv) If the delay caused by Owner or its Personnel or resulting from an Uncontrollable Circumstance delays the Performance Test by more than one (1) year from the Ready for Performance Test Date, then (x) the Performance Test shall be deemed to have been completed and Substantial Completion shall be deemed to have occurred for purposes of the Warranties, Section 22.2 and any other provisions of the Agreement pertaining to the Guaranteed Substantial Completion Date and the Net Unit Electrical Output Guarantee; (y) Contractor shall be entitled to the remaining Milestone Payments; and (z) Final Completion will be deemed to have occurred provided that Contractor completes such other Work that can be completed notwithstanding the inability to conduct the Performance Test. At such time, if any, as Owner is ready for the Performance Test to be conducted, Contractor's sole responsibility hereunder with respect to such Performance Test and the Net Unit Electrical Output Guarantee shall be to provide Technical Support for the testing on a Time and Materials Basis.

(v) Except as provided in Section 11.5(c)(iv), should a Unit when tested be assessed to have not fully met the Net Unit Electrical Output Guarantee, Contractor shall proceed as provided below in Section 11.6. Contractor shall promptly notify Owner of the Unit's readiness for any required retest, specifying the time and date of such test, such date being not less than seven (7) Days from the date of notification.

11.6 Net Unit Electrical Output Guarantee. Subject to the limits of liability set forth in Section 13.2, and subject to the provisions of this Agreement and in accordance with the Operating Procedures and Maintenance Procedures and Facility Manuals, Contractor guarantees

that the Net Unit Electrical Guarantee for a Unit, when loaded with the Nuclear Fuel, shall be 1101 MWe (the "Net Unit Electrical Output Guarantee") determined using the conditions and calculation as set forth in Exhibit L based on mechanical draft cooling towers and measured at the high side of the main transformer including designated House Loads pursuant to Exhibit L, as evidenced by the Net Unit Electrical Output Test. Meeting the Net Unit Electrical Output Guarantee demonstrates that the Unit shall be capable of producing an average annual Net Unit Electrical Output of 1,117 MWe.

(a) In the event a Unit does not meet the Net Unit Electrical Output Guarantee as of the Guaranteed Substantial Completion Date, Contractor shall, at its sole option, (i) perform, at its own expense, such repair, replacement or adjustment or modification to enable such Unit to produce the guarantee or (ii) subject to the provisions below in this Section 11.6(a), pay the applicable Performance Liquidated Damages. The decision to repair, replace, adjust or modify shall be made by Contractor, after consultation with Owner. Contractor also shall provide to Owner an analysis of the cause that led to the failure of the Unit to meet the Net Unit Electrical Output Guarantee and an estimate of the efforts that would be needed to effect the repair, replacement, adjustment or modification. Contractor's repair, replacement, adjustment or modifications to a Unit shall not interfere with Owner's commercial operation of such Unit. The time period during which Contractor shall have this right to repair, replace, adjust or modify the Unit to improve performance shall terminate at the end of the first Operational Cycle; provided, however, if the equipment or component required to remedy the problem has long lead requirements that preclude the remedy in this time period, Contractor shall have until the end of the second Operational Cycle to remedy the problem. If Contractor has not already paid the Performance Liquidated Damages pursuant to the terms hereof and, (subject to the proviso in the preceding sentence) as of the end of the first Operational Cycle, the Net Unit Electrical Output Guarantee has not been met, Contractor shall pay the applicable Performance Liquidated Damages. Contractor also shall have the right to terminate its efforts to improve the performance of the Unit and pay the applicable Performance Liquidated Damages at any time during the first Operational Cycle. If Contractor has previously paid Performance Liquidated Damages and, as a result of Contractor's efforts, as of the end of the first Operational Cycle (or the second Operational Cycle if long lead equipment or components are involved in the remedy) the Unit is able to meet the Net Unit Electrical Output Guarantee or Contractor has been able to increase the Net Unit Electrical Output from the level at which the Performance Liquidated Damages were previously paid, in each case as demonstrated by a Net Unit Electrical Output Test, Contractor shall be entitled to a refund of all or the applicable portion of the Performance Liquidated Damages paid by Contractor, calculated as provided in Section 13.2. Amounts expended by Contractor in its efforts to meet the Net Unit Electrical Output Guarantee shall not limit or affect Contractor's obligation to pay Performance Liquidated Damages.

(b) The Net Unit Electrical Output Guarantee is subject to the conditions stated in Section 14.4(c) and to the following:

(i) Owner has provided access to the electrical grid and sufficient electrical load to perform the test; and

(ii) The Net Unit Electrical Output Guarantee is based upon the conditions specified in Exhibit L. If conditions during the test differ from those specified, adjustments shall be made accordingly to the Net Unit Electrical Output using graphs, tables and other data as prepared by Contractor, after consultation with Owner, to establish the Net Unit Electrical Output to compare to the Net Electric Output Guarantee.

(c) Necessary auxiliary equipment for producing the Net Unit Electrical Output shall include only the Equipment loads provided in Exhibit L.

(d) The Net Unit Electrical Output Guarantee shall be demonstrated by the Net Unit Electrical Output Test to be conducted at the times and subject to the conditions set forth herein. Satisfactory completion of such test or re-test, or the payment of Performance Liquidated Damages to Owner shall relieve Contractor of any further obligation with respect to the Net Unit Electrical Output Guarantee.

ARTICLE 12 – STAGES OF COMPLETION

12.1 Turnover.

(a) Turnover refers to the sequential mechanical completion of each system and structure of a Unit. "Turnover" of a system or structure shall occur upon the satisfaction of the following conditions:

(i) Such system, structure or component (A) shall be mechanically and electrically sound; (B) shall have been cleaned out as necessary to perform the Construction and Installation Tests for such system or structure; and (C) the subsystems comprising such system, structure or component shall have been checked for alignment, lubrication, and electrical continuity and hydrostatic and pneumatic pressure integrity; and

(ii) the Construction and Installation Tests for such system or structure shall have been completed such that Owner can confirm that the criteria for the Construction and Installation Tests have been met; and

(iii) Structures, systems and components or portions thereof shall be completed, necessary coatings applied, and the area cleaned; and

(iv) The Preoperational Test has validated compliance with the design specifications to the extent permitted under the Unit's configuration status. (For example, some design requirements cannot be validated until after Nuclear Fuel loading.)

(b) Notice and Acceptance of Turnover. When Contractor believes the provisions of Section 12.1(a) have been satisfied with respect to each system or structure, Contractor shall deliver a written notice of such determination through the Joint Test Working Group to Owner with sufficient detail to enable Owner to determine whether Contractor has achieved such requirements. Turnover of such system or structure shall be deemed to have occurred within ten (10) Business Days following delivery of such determination to Owner, unless within such ten (10) Business Days period, Owner has notified Contractor in writing of

why it disagrees that Turnover has occurred, in which case (and without prejudice to Contractor's right to submit a Claim) Contractor shall take such corrective actions as are necessary and resubmit its written notice of determination to Owner in accordance with this Section 12.1(b). Upon Turnover of a system or structure, Contractor shall turn over risk of loss and care, custody, control and operation of such system, structure or component to Owner in accordance with Section 21.2.

12.2 Preoperational Test Completion.

(a) Unit Mechanical Completion. "Unit Mechanical Completion" shall be achieved when the conditions as stated in Section 11.4(a) for the commencement of Nuclear Fuel loading the Unit have been achieved. When submitting its written notice of determination for such Unit Mechanical Completion, Contractor shall include notice that Turnover has occurred.

(b) "Preoperational Test Completion" for a Unit shall be deemed to have occurred upon satisfactory completion of the Preoperational Tests for the Unit.

(c) Contractor shall notify Owner when the provisions of Section 12.2(b) have been satisfied. Owner shall accept such Unit as having achieved Preoperational Test Completion, by delivering to Contractor notice of that acceptance within ten (10) Business Days following receipt of Contractor's notice that Preoperational Test Completion has occurred; alternatively, Owner may disagree that Preoperational Test Completion has occurred by notifying Contractor in writing of why it disagrees that Preoperational Test Completion has occurred. If no notice is issued by Owner within the required time period, Owner shall be deemed to have accepted that Preoperational Test Completion has occurred. The date of Preoperational Test Completion shall be the date the Unit has achieved Preoperational Test Completion and not the date of Owner's acceptance.

12.3 Startup Test Completion.

(a) Prior to commencing the Startup Tests, the Parties shall have jointly determined and agreed upon a punch list of the remaining Work for each Unit. The items on the punch list that are required to be completed before the commencement of the Startup Tests for reasons of safety or compliance with applicable Laws shall have been completed prior to the commencement of the Startup Tests.

(b) "Startup Test Completion" for a Unit shall be deemed to have occurred upon satisfactory completion of the Startup Test for the Unit or the deemed completion of a Startup Test pursuant to Section 11.4(c)(iv).

(c) Contractor shall notify Owner when the provisions of Section 12.3(b) have been satisfied. Owner shall accept such Unit as having achieved Startup Test Completion, by delivering to Contractor notice of that acceptance within forty-five (45) Days following receipt of Contractor's notice that Startup Test Completion has occurred; alternatively, Owner may disagree that Startup Test Completion has occurred by notifying Contractor in writing of why it disagrees that Startup Test Completion has occurred. If no notice is issued by Owner within the required time period, Owner shall be deemed to have accepted that Startup Test Completion has

occurred. The date of Startup Test Completion shall be the date the Unit has achieved Startup Test Completion and not the date of Owner's acceptance.

12.4 Substantial Completion.

(a) "Substantial Completion" for a Unit shall have occurred upon satisfactory completion of a Performance Test, the deemed completion of a Performance Test pursuant to Section 11.5(c)(iv), or the payment of applicable Performance Liquidated Damages by Contractor.

(b) Contractor shall notify Owner when the provisions of Section 12.4(a) have been satisfied. Owner shall accept such Unit as having achieved Substantial Completion, by delivering to Contractor notice of that acceptance within sixty (60) Business Days following receipt of Contractor's notice that Substantial Completion has occurred; alternatively, Owner may disagree that Substantial Completion has occurred by notifying Contractor in writing of why it disagrees that Substantial Completion has occurred. If no notice is issued by Owner within the required time period, Owner shall be deemed to have accepted that Substantial Completion has occurred. The date of Substantial Completion shall be the date the Unit has achieved Substantial Completion and not the date of Owner's acceptance.

12.5 Punch List. Prior to Substantial Completion of a Unit, the Parties shall jointly determine and agree upon a comprehensive list of remaining Work, which shall be of a minor nature and not prevent commercial operation of the Unit (the "Final Completion Punch List"). Owner shall have the right to withhold from the Milestone Payment due upon Substantial Completion of a Unit an amount of money equal to one hundred twenty-five percent (125%) of the expected cost of completion of the Final Completion Punch List, which amount shall be released to Contractor upon Final Completion of the Unit. In the event that any items on the Final Completion Punch List cannot be performed until the next Nuclear Fuel re-load, Final Completion of a Unit shall be deemed to have been achieved for purposes of this Agreement provided that Contractor agrees in writing with Owner to return to complete such Work at the time of the next Nuclear Fuel re-load, and Owner shall have the right to continue to retain one hundred twenty-five percent (125%) of the expected cost of completion of such items until such Work is completed. In lieu of the retention described in this Section 12.5, Contractor shall have the right to provide a letter of credit or a bond, in form and substance reasonably satisfactory to Owner, for the completion of the Final Completion Punch List, in which case the amount retained for the Final Completion Punch List shall be released to Contractor.

12.6 Final Completion.

(a) Subject to 12.5, "Final Completion" of a Unit shall be deemed to have occurred upon the completion of the Final Completion Punch List and the other Work required under the Agreement with the exception of obligations under the Warranties.

(b) Contractor shall notify Owner when the provisions of Section 12.6(a) have been satisfied. Owner shall accept the Unit as having achieved Final Completion by delivering to Contractor notice of that acceptance within thirty (30) Days following receipt of Contractor's notice that Final Completion has occurred; alternatively, Owner may reject the Unit as having

achieved Final Completion by notifying Contractor in writing of why it disagrees that Final Completion has occurred. If no notice is issued by Owner within the required time period, Owner shall be deemed to have accepted that Final Completion has occurred. The date of Final Completion shall be the date the Unit has achieved Final Completion and not the date of Owner's acceptance.

(c) In the event that Contractor is unable to achieve Final Completion within six (6) months following Substantial Completion of the Second Unit (or if there is no Second Unit, the First Unit) due to the fact that Owner limits Contractor's access to the Facility or otherwise does not allow Contractor to take the necessary actions to achieve Final Completion, Final Completion shall be deemed to have occurred; provided that the foregoing shall not apply with respect to Final Completion Punch List items that cannot be completed until the next Nuclear Fuel re-load as provided in Section 12.5.

ARTICLE 13 – LIQUIDATED DAMAGES

13.1 Delay Liquidated Damages. The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur if a Unit does not achieve Substantial Completion by the Guaranteed Substantial Completion Date for such Unit and, accordingly, if a Unit does not achieve Substantial Completion by such Unit's Guaranteed Substantial Completion Date due to Contractor's fault, Owner's remedy for such delay shall be to recover from Contractor as liquidated damages, and not as a penalty, liquidated damages ("Delay Liquidated Damages") as follows:

Number of Days After Guaranteed Substantial Completion Date:	Delay Liquidated Damages (per Day or portion thereof):
1-30	\$100,000
31-90	\$150,000
91-150	\$200,000
151-365	\$250,000
366 or beyond	\$0

If a delay in achieving Substantial Completion of a Unit continues beyond three hundred sixty-five (365) Days after the Guaranteed Substantial Completion Date for such Unit, no additional Delay Liquidated Damages shall be due. Payment of the Delay Liquidated Damages shall be Owner's sole and exclusive remedy for Contractor's failure to achieve Substantial Completion of a Unit on or before the Guaranteed Substantial Completion Date for such Unit; however, Delay